



## ELEMENTS FOR EFFECTIVE DISCIPLINES ON FISHERIES SUBSIDIES IN THE POST-BALI WORK PROGRAMME

COMMUNICATION FROM ARGENTINA; ICELAND; NEW ZEALAND;  
NORWAY; PERU; AND URUGUAY

The following communication, dated 19 June 2015, is being circulated at the request of the Delegations of Argentina; Iceland; New Zealand; Norway; Peru; and Uruguay.

### 1 INTRODUCTION

1.1. Given the compelling case for fisheries subsidies reform, we remain committed to securing substantive and effective disciplines on fisheries subsidies. We recognise that the current post Bali discussions on recalibration are focused on finding newer, alternative paths towards convergence amongst the membership and in that regard at what is achievable. In that regard, we would also recall that the Chair of the Trade Negotiations Committee has been clear that the work programme must be "substantive and meaningful".<sup>1</sup>

1.2. It is within this context that we make this contribution on elements for inclusion in the post-Bali work programme (PBWP). In doing so, we are guided by our Ministerial mandates, in particular the agreement in Hong Kong to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, with appropriate and effective special and differential treatment, and the recognition at MC8 about the need to explore how to overcome the most critical and fundamental stalemates.

1.3. This communication is without prejudice to the individual positions of Members that they have previously taken in the negotiations or may take in the context of the PBWP. It represents an effort to identify elements that attract broad convergence amongst Members for inclusion in the PBWP and adoption at MC10.

### 2 CONTEXT

2.1. We remain deeply concerned at the state of the world's fisheries resources given the critical importance of the fisheries sector to poverty reduction, livelihood and food security concerns particularly in developing countries. The desire and need to negotiate new effective disciplines on fisheries subsidies is demonstrated by the support for such disciplines coming from all four corners of the globe and spanning LDCs, developing and industrialised Members. In fact almost 60% of the WTO's membership has called for disciplines on fisheries subsidies (which includes well over two-thirds of developing country Members).

2.2. Subsidies to the fishing sector distort the trade, economics and politics of fishing. Subsidies distort trade by creating conditions of unfair competition. Subsidies which underwrite the costs of harvesting or the costs of production contribute to overcapacity in global fleets and global overfishing, by encouraging fishing when it may otherwise not be profitable. Fisheries are a key resource for many Members, and subsidies can undermine the sustainable use of their stocks.

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<sup>1</sup> JOB/TNC/47 (27 April 2015), para 2.19.

Subsidies can also affect political decision making over management of the resource, as well as creating uneven competition between fishing nations which harvest and trade fish.

2.3. The United Nations Food and Agriculture Organization (FAO), in its 2014 report on the State of World Fisheries and Aquaculture (SOFIA), reported that fish now accounts for almost 17% of the global population's intake of protein - in some coastal and island countries it can top 70%. Fish provided nearly 3 billion people with almost 20% of their intake of animal protein, and 4.3 billion with about 15% of such protein. The FAO estimates that fisheries and aquaculture support the livelihoods of 10–12% of the world's population. Since 1990 employment in the sector has grown at a faster rate than the world's population and in 2012 provided jobs for some 60 million people engaged in capture fisheries and aquaculture.

2.4. While fish remains among the most traded food commodities worldwide, the state of the world's fisheries have deteriorated since the launch of the Doha Round, with almost 29% of global stocks reported as overfished by the FAO in 2014. There is also diminishing room for growth in catches through increased fishing effort, with over 60% of stocks reported as fully exploited. This is in the context of harmful fisheries subsidies having increased over the same period to an estimated US\$20 billion and continuing to be a major contributing factor.<sup>2</sup>

2.5. The call for action in the WTO on fisheries subsidies will be centre stage this year. World leaders reaffirmed in 2012, at the UN Conference on Sustainable Development, their commitment to eliminate subsidies that contribute to illegal, unreported and unregulated fishing and overcapacity, and their continued commitment to concluding multilateral disciplines on fisheries subsidies that will give effect to the WTO Doha Development Agenda and the Hong Kong Ministerial Declaration. In September 2015, world leaders will adopt the new Sustainable Development Goals (SDGs). Prohibiting certain forms of fisheries subsidies<sup>3</sup> and the conclusion of new effective WTO disciplines will be the focus of one of the targets under an SDG on conserving and sustainably using the oceans, seas and marine resources for sustainable development.

2.6. The PBWP provides the opportunity to lay the foundation for an outcome with effective new disciplines on fisheries subsidies that are win-win-win for trade, for development, and for the environment.

### 3 ELEMENTS

3.1. We consider that any outcome on fisheries subsidies, that provides effective and meaningful disciplines, should contain the following elements:

- a. Prohibitions focusing on some of the most obvious subsidies around which all Members should be able to agree to;
- b. Appropriate and effective special and differential treatment;
- c. Transitional arrangements;
- d. Standstill provision;
- e. Transparency, monitoring and review provisions; and
- f. Continuation of the fisheries subsidies reform process.

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<sup>2</sup> U Sumaila RU, Lam VWY, Le Manach F, Swartz W and Pauly D (2013) Global fisheries subsidies. Directorate General for Internal Policies, Policy Department B: Structural and Cohesion Policies, Fisheries, European Parliament, IP/B/PECH/IC/2013-146, Brussels. 44 p.

<sup>3</sup> Under the proposed SDG 14 (conserve and sustainably use the oceans, seas and marine resources for sustainable development), the sixth target focuses on the prohibition of certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing.

### 3.1 Prohibitions

3.2. Prohibitions are necessary to deliver on the Hong Kong mandate to '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'. We consider that we should focus on the most obvious and simple prohibitions around which all Members should be able to agree. This is based in part on the chair's 2011 assessment of where there was most convergence, where there is the most compelling case for a prohibition, and where legal drafting should be most simple.

3.3. Taking into account other contributions on elements<sup>4</sup>, we propose that there should be prohibitions on:

- i. subsidies on activities affecting overfished stocks; and
- ii. subsidies provided to any vessel engaged in IUU fishing

3.4. Under these prohibitions Members would not be able to introduce any new subsidies in these areas or maintain existing subsidies beyond a limited transitional period.

3.5. All other specific fisheries subsidies would remain actionable under the SCM Agreement. In the absence of comprehensive prohibitions, an additional discipline would be necessary to guard against circumvention. This would clarify that the new disciplines are attributable to the Member conferring them, regardless of recipient nationality, vessel flag, or the rule of origin.

### 3.2 Special and differential treatment

3.6. Special and differential treatment (S&DT) needs to be proportional to, and appropriate for, the obligations that are envisaged. The prohibition on subsidies on activities affecting overfished stocks, and the prohibition on subsidies provided to any vessel engaged in IUU fishing should apply to all subsidies from all Members. It would not be appropriate to accord S&DT on these prohibitions. S&DT may however be appropriate in the context of the transparency provisions or the transitional arrangements.

### 3.3 Transitional arrangements

3.7. We are mindful that some Members may have existing subsidy programmes that will not be in conformity with the prohibition on subsidies on activities affecting overfished stocks. To that end, similar to the approach taken under Article 28 of the SCM Agreement, we would be open to limited transitional arrangements whereby Members would have a limited period to bring their programmes into conformity with the new disciplines.

3.8. In the case of prohibited subsidies provided to any vessel engaged in IUU fishing, it would seem inappropriate to provide a transitional period.

### 3.4 Standstill

3.9. Given we are only proposing a limited list of prohibited subsidies, this leaves a range of subsidies that are recognised as being harmful such as vessel construction and fuel subsidies. It would therefore seem prudent to introduce a standstill commitment using language similar to that adopted at Rio+20 (to refrain from introducing new subsidies that contribute to overcapacity and overfishing or from extending or enhancing existing ones) until more complete disciplines can be established. This standstill would apply to subsidies that contribute to overcapacity and overfishing not covered by the prohibitions.

3.10. We envisage recommitting to what is essentially agreed language. We consider that such a standstill could be monitored through the WTO.

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<sup>4</sup> The ACP in its paper JOB/TNC/46 called for the prohibition of certain fisheries subsidies that contribute to overcapacity and over-fishing as an integral part of the post-Bali work programme.

### **3.5 Transparency, monitoring and review**

3.11. New disciplines will necessarily require new and tailored reporting requirements to enable effective monitoring, together with effective measures for surveillance and enforcement. The types of subsidies for which Members provide information should also include fuel subsidies where these may have an impact on fisheries even when such subsidies may be non-specific. While already the case, the SCM Agreement could be amended to make clear that Members are required to notify any specific subsidy that they grant or maintain to persons or enterprises engaged in fishing or fishing related activities.

3.12. The SCM Committee should hold a dedicated annual review of progress in the implementation of the new disciplines, the nature and extent of Members' subsidy programmes, and the related fish stock status, production and trade. This would be supported by a Secretariat summary based on Members' notifications complemented by relevant information provided by Members to the WTO Secretariat and information from other international organisations.

### **3.6 Continuation of the fisheries subsidies reform process**

3.13. Given the limited disciplines envisaged under the PBWP, we Members should also establish a built-in-agenda to continue the fisheries subsidies ongoing reform process.

## **4 CONCLUSION**

4.1. We are ready to engage constructively in discussions with other interested Members whether that be bilaterally, in small group discussions or through the Rules Negotiating Group on how the proposed elements feature in the PBWP for adoption at MC10.

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