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REVISED DRAFT CONSOLIDATED CHAIR TEXT

CHAIR'S EXPLANATORY NOTE ACCOMPANYING TN/RL/W/276/REV.1

Addendum

The attached document is the Chair's explanatory note accompanying the revised fisheries subsidies draft negotiating text circulated in TN/RL/W/276/Rev.1. The content of the explanatory note was delivered orally by the Chair when he presented the text at the 30 June 2021 meeting of the Negotiating Group on Rules at the level of Heads of Delegation.

INTRODUCTION

1. Good morning colleagues, thank you for joining us this morning. Let me also welcome Director-General Dr. Ngozi. As you know, Dr. Ngozi, in her capacity as the Chair of the Trade Negotiations Committee (TNC), has convened the TNC meeting at the Ministerial level on 15 July. As I indicated in my e-mail of 25 June, the purpose of today's meeting is for me to present the revised draft text in advance of that Ministerial TNC, and explain the revisions.

2. Given that you would no doubt need some time to go over the revised text and my explanations, in accordance with our past practices I do not plan to open the floor for comments at this meeting.

3. As you know, everything in the previous version of the text circulated on 11 May in document TN/RL/W/276, as well as in the earlier texts in RD/TN/RL/126 and its revisions was based on the collective work of the Negotiating Group on Rules (NGR), including Members' proposals, discussions and the work of the facilitators. The sources and the rationale of the text were explained in detail in addenda to each draft text.

4. The revised text in W/276/Rev.1 that I will share with you today is also a reflection of our collective work. As you all know, we have been engaging almost non-stop since 11 May when the draft text in W/276 was circulated, including some weekends, early mornings and evenings, in various configurations.

5. Let me first thank you for the commitment and flexibility you have shown in this phase of the work. With your support, we have discussed almost all of the main provisions of the draft text in the span of several weeks, and we were able to deepen our engagement on most of the sticking points. This revised draft text is the reflection of this work, and I am sure that everything contained in here will be familiar to you.

6. That said, as you also know, the purpose of this draft text is to serve as a basis for the Ministerial level meeting on 15 July. This means that it is meant to be a genuine reflection of the whole Group, one that is conducive to attracting convergence, and not necessarily a reflection of the positions of one side or another.

7. Thus, the draft text is not a simple copy-and-paste compilation of everything we have discussed. Of course, what is not reflected in the draft text has not been disregarded or put aside. For example, we had fruitful discussions on several new proposals when we met a couple of weeks ago. These were on capping from Brazil, on dispute settlement from Chinese Taipei, on Articles 1, 3, 5 and 9 from Cameroon, on Article 5.1.1 from Morocco, on special and differential treatment (SDT) from the ACP and Africa Group, and on forced labour from the United States. Since these proposals were discussed, the NGR also has received many more written proposals from India, Sri Lanka, and Chinese Taipei, and textual suggestions made during meetings, including a draft Ministerial Declaration, which were circulated in the *aide memoire*. Obviously, they cannot all be just copied and pasted into the revised text, and we have yet to complete our discussions or crystallize our thinking on these proposals and the issues they raise, so we will need to continue these discussions as we move forward.

8. This also brings me to the point that this revised text is without prejudice to any Member's positions or views. This means that, like all of the earlier texts, the entire document should be treated as being in square brackets; nothing being agreed until everything is. This of course applies to what is not reflected in the revised text as I noted just now, as well as where language and square brackets have been modified.

9. Based on all of this, I would like to encourage all of you and your delegations to read and approach this text from a common perspective, that is from the perspective of finding in it a possible compromise.

ARTICLE 1

Article 1.1

10. With this, let me now turn to the revised text. Let me first walk you through Article 1 on scope.

11. Article 1.1, which defines the scope of the disciplines, and footnotes 1 and 2 which refer to aquaculture and fisheries access agreements, are unchanged from the language in W/276. Members have generally supported these texts.

Article 1.2

12. The text of Article 1.2 remains unchanged for a different reason, which is that Members' views on it remain apart. As you know, this provision would bring non-specific fuel subsidies into the scope of the disciplines. During the recent dedicated discussion on this topic, as well as in many of my consultations, it was clear that Members hold different views on this provision:

- For some Members, the concept of specificity in the SCM Agreement is related to economic concerns, and not to the sustainability objective of the fisheries subsidies negotiations. They argue that from the perspective of sustainability, fuel subsidies are the most harmful subsidies and thus, whether specific or not, should be subject to the disciplines.

- Some other Members agree that specificity may not be relevant for the sustainability objective, and consider that fuel subsidies should not be singled out in this regard.

- At the same time, some other Members see specificity as a relevant concept as it is part of the broader system of subsidies disciplines under the WTO and the SCM Agreement. These Members do not find it appropriate to subject generally available fisheries subsidies to the disciplines.

  As a particular concern in this area, a number of Members pointed to fuel detaxation or fuel tax relief schemes, which in their view should not be subject to the disciplines on the basis that they are not subsidies or are not focused on the fisheries sector.

13. Depending on which of these views they hold, some Members argue for removing Article 1.2 entirely, and others advocate maintaining the text and removing the square brackets around it. Some others could accept the text in Article 1.2 so long as there was an exception for fuel detaxation or fuel tax relief schemes.

14. Given this spectrum of views and proposed solutions to reflect them, my assessment is that keeping Article 1.2 in the text in brackets without modification is the best way to reflect the opposing views as to deleting this provision entirely versus maintaining it and removing the brackets. This is an important issue, so we will need to return to it at an appropriate moment.

ARTICLE 2

15. Article 2 sets out the definitions for five terms that apply throughout the disciplines. As explained earlier, the definitions of the first four terms in (a) through (d) for "fish", "fishing", "fishing related activities" and "vessel" were taken directly from the *Agreement on Port State Measures* (PSMA). The definition of the term "operator" in (e) was based on the facilitator's work.

16. Members have generally supported these definitions in the previous texts and they remain unchanged in the current text.

ARTICLE 3

17. Turning now to Article 3, which contains disciplines on subsidies to IUU fishing. Thanks to your intensive work again, we have made some important progress on this pillar, which is reflected in a few but important changes to this Article. Let me first address these changes.

Footnote 3

18. First, let me draw your attention to footnote 3 to the heading of Article 3. This footnote defines the term "illegal, unreported and unregulated fishing" in reference to the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU).

19. In the previous text, this definition was qualified by the phrase "where applicable, as implemented under national fisheries laws and regulations, or under relevant RFMO/A management and conservation rules and procedures" appearing at the end of the footnote, in square brackets. This bracketed text was deleted in the revised draft.

20. This is because, during our work so far, there has been a generalized view that we should focus only on the subsidies, not IUU fishing per se. As I see it, the deleted text was not consistent with this principle as it would have the effect of directly bringing national fisheries laws and regulations – as well as the internal rules and procedures of RFMO/As – squarely into the disciplines. In effect, this text would have made it possible for the WTO to scrutinize Members' domestic fisheries regimes as such.

21. Given that all Members agree that we should avoid this, the bracketed text has been deleted.

"Operator"

22. Next is the term "operator", which appeared in square brackets in the earlier text. While this term appears in various places under Article 3, the crux of the question is whether the subsidy prohibition under the IUU fishing pillar should apply to subsidies to a vessel only, or also to subsidies to an operator.

23. During our discussion on this issue, most Members supported including the term "operator". Among other things, they noted that subsidies may not be granted to vessels per se, but to persons, such as the operators of the vessels. In addition, some supported the idea of including the "operator" in the disciplines on the basis that limiting the prohibition to the vessels could lead to circumvention through creative business structures.

24. On the other hand, for Members expressing discomfort with including the "operator", it was clear from our work that the main underlying concern was that covering the operator might end up prohibiting subsidies to vessels of a given operator that are not engaged in IUU fishing.

25. In response it was noted that this concern might not arise in the current structure of Article 3, in which the IUU fishing determination is the trigger for the subsidy prohibition. In this view, the scope of the subsidy prohibition would depend on the IUU fishing determination; or in other words, if the IUU fishing determination is made against a vessel, it would be the subsidies to that vessel which would be prohibited, whereas if the determination were in respect of an operator, the subsidies to the operator would be prohibited.

26. What this work has clarified for me is that Members have this shared understanding of the scope of the subsidy prohibition being commensurate with the scope of the IUU fishing determination. So, to reflect this widely shared view, the square brackets around the term "operator" have been removed.

27. To be clear, I do not mean to suggest that our work is complete. Obviously, some Members have different views on whether the current text is enough to address the concern. But this is an issue that we can address in a text-based discussion, with the removal of the square brackets indicating our substantive progress.

Footnote 4

28. Since the brackets around the term "operator" have been removed, so have the brackets around the definition of the term "operator" in footnote 4.

29. In addition, some Members questioned whether the definition of the term "operator" in footnote 4 is related to the definition of the same term in Article 2(e). As you would recall, the source

of both pieces of the definition of the term "operator" was the work of the facilitator. There, the two pieces were contained in a single definition of the term "operator" in the IUU fishing pillar. However, as the term "operator" is used in other Articles, the general definition was moved to Article 2(e), while only the part specific to IUU fishing was maintained in footnote 4.

30. As such, breaking out the definition of the term "operator" in Article 2(e) and footnote 4 was not meant to create two definitions of the term "operator". Instead, footnote 4 was meant to be a further elaboration of the term "operator" as contained in Article 2(e), in the specific context of IUU fishing. This relationship has been clarified in footnote 4, through a cross reference to the definition in Article 2(e).

Article 3.8

31. The last revision in Article 3 appears in Article 3.8. As you would recall, in the previous draft text this was a SDT provision, which provided a timebound exemption from the prohibition for subsidies for low income, resource-poor or livelihood fishing within 12 nautical miles.

32. During the dedicated discussion on this provision, as well as in our work on SDT more generally, some specific issues were raised on this text:

- First, as a purely technical matter, some Members recalled that their territorial sea may be less than 12 nautical miles, and suggested saying "up to" 12 nautical miles, instead of "within" 12 nautical miles. This is now reflected in the current text.

- Second, many Members were concerned that the characteristics of fishing, such as low income, resource-poor or livelihood fishing could become a self-judging standard, and are thus too broad.

  However, it was also made clear that no one seeks to use this flexibility to intentionally subsidize IUU fishing. Instead, the characteristics, together with the geographical limit, were meant to identify a narrowly-defined sector consisting of subsistence, artisanal or small-scale fishers, which constitute the most vulnerable sector.

  In this regard, it was suggested that the three characteristics – low income, resource-poor and livelihood fishing – should apply cumulatively in order to capture this intention. This is now reflected in the current text, which refers to "low income, resource-poor and livelihood" fishing.

- Finally, many Members, including many developing Members, objected to any flexibility for any Member or type of fishing in the IUU fishing pillar. Some developing Members, however, were concerned about implementation of the disciplines and how this would affect their subsistence, artisanal and small-scale fishers.

  Based on this discussion, one idea that was suggested was to convert this provision into a peace clause rather than an exemption. In this way, there would be a period of time during which disputes could not be brought against developing Members, including least-developed country (LDC) Members, with respect to their subsistence, artisanal and small-scale fishers. This is now reflected in the current text, which was formulated based on a similar peace clause provision in Article 13 of the *Agreement on Agriculture*.

  Because there would be no exception, the corresponding notification requirement referred to in Article 8.4(a), which was linked to the previous formulation of an exception, has been removed.

33. Having said all of this, the whole provision remains in square brackets as further discussion is needed.

Other provisions under Article 3

34. Beyond these, other provisions of Article 3 remain unchanged. This does not mean that we have not worked on them. As you know, the Group had a number of dedicated discussions on various other topics in one configuration or another, and I held many consultations in between as well. However, revisions were either not necessary, not ripe or not feasible for different reasons.

35. For example, Members were generally comfortable with the current text of Articles 3.1, 3.5, 3.6 and 3.7 in substance. There were of course some suggestions and proposals to improve one part of the text or another, or to change the placement of certain provisions, but our discussion on each such suggestion or proposal was quite limited. These suggestions have been very helpful and I took careful notes of them. I think they will be relevant when we review the draft text on a line-by-line basis.

36. Article 3.2 is also generally supported by Members, but some Members have raised a specific concern on a particular issue. Specifically, the concern is that an IUU fishing determination made by a flag State Member under subparagraph (b) could inadvertently undermine an IUU fishing determination of a coastal Member. As explained in W/276/Add.1, this concern was raised earlier and several changes were made to the text in order to address it. Some but not all Members consider these changes sufficient to alleviate this concern.

37. Articles 3.3 and 3.4 remain unchanged as there are opposing views on what should be done with these provisions. On Articles 3.3(b) and (c), views remain divided between those who oppose any requirements on IUU fishing determinations made by competent authorities before triggering the subsidy prohibition, and those who want a more stringent standard than the "positive evidence" and "due process" currently reflected in the draft text. In addition, seeing these opposite views, some Members who had different preferred views now consider the current text to represent the middle ground and a possible landing zone.

38. A similar dynamic is evident in respect of Article 3.4, which sets the minimum duration of the subsidy prohibition. Some Members consider that the subsidizing Member should have the discretion not to apply the prohibition at all if it finds that the IUU fishing infraction was minor. Other Members, however, see such discretion as creating a major loophole, and consider that an IUU fishing determination made by a competent authority should always trigger the subsidy prohibition and for a minimum duration at least. In between, some Members think that the current text strikes the right balance by setting the minimum duration on the one hand, while allowing the subsidizing Member some room to consider proportionality over and beyond this period.

ARTICLE 4

Article 4.1

39. Turning to Article 4.

40. Article 4 contains disciplines on subsidies regarding overfished stocks. The first provision, Article 4.1, contains the main discipline of the overfished stocks pillar. This is a single-sentence, straightforward prohibition without conditionalities, and it remains unchanged in the revised draft text.

Article 4.2

41. Article 4.2 provides that a fish stock is considered overfished if it is recognized as such by a coastal Member with jurisdiction over the area where the fishing is taking place, or by a relevant RFMO/A, based on the best scientific evidence available to it.

42. Here, one technical change has been made in the revised text for consistency. This is the clarification that the referenced determinations by relevant RFMO/As are those "in areas and for species under their competence". Identical language on RFMO/As' competence is already contained in Article 3.2 (c) and footnotes 9 and 10. Thus the change in Article 4.2 is simply to make all the references to the competence of RFMO/As consistent throughout the draft text.

Article 4.3

43. As you know, Article 4.3 is an exception from the prohibition, for subsidies that are implemented in a manner that promotes the rebuilding of stocks to a biologically sustainable level.

44. Thus, in W/276, this exception is limited to subsidies that themselves are implemented to promote rebuilding of a stock to a biologically sustainable level. Many Members favour continuing to link this exception only to the nature of the subsidies themselves. Others, however, consider this approach to be overly restrictive, and have suggested expanding the exception to situations where there are other, non-subsidy, measures in place to promote rebuilding of the stock. This suggestion would mean reverting back to the previous formulation in the 126/Rev.2 text that referred to "other appropriate measures". To highlight that substantive discussion is still needed on this point, the bracketed language "and/or measures" has been inserted after the word "subsidies" on the second line.

45. In this regard, I would remind Members that in the overcapacity and overfishing pillar, pursuant to Article 5.1.1, a Member would be able to provide a subsidy that otherwise would be prohibited under Article 5.1 if it could show that other (non-subsidy) measures are being implemented to maintain the stock or stocks at a biologically sustainable level. Thus reinserting a reference to measures in Article 4.3 would somewhat blur the distinction between Articles 4 and 5, which are aimed at different situations; with Article 4 addressing stocks that are in the worst and most vulnerable condition.

46. Again, inserting the bracketed reference to measures is meant to provide a basis to continue discussing these issues and to find an acceptable middle ground.

47. Finally, you may note some revisions in footnote 9 that defines the term "biologically sustainable level". This footnote is the same as the footnote 10, defining the same term in the overcapacity and overfishing pillar, and I will explain those changes in that context.

Article 4.4

48. Coming now to Article 4.4, you will recall that this provision was identical to Article 3.8 in W/276, creating a two-year SDT exemption for low income, resource-poor or livelihood fishing. This text has been modified in the same way as Article 3.8, to become a peace clause rather than an exemption, for the same reasons as in respect of Article 3.8.

ARTICLE 5

Article 5.1

49. Now we come to Article 5, containing the disciplines on subsidies contributing to overcapacity and overfishing.

50. As you all well know, the core disciplines in this pillar are based on the compromise, "hybrid" approach based on a list of presumptively prohibited subsidies qualified by sustainability-based elements.

51. Article 5.1 contains the main prohibition in this pillar. Its chapeau contains a simple, straightforward prohibition of all subsides contributing to overcapacity or overfishing, followed by an illustrative list of subsidies that presumptively contribute to overcapacity or overfishing. This drafting has not been changed in the revised draft text, although I do note that some Members have expressed concerns on this provision. For example, some continue to prefer moving the sustainability elements into the prohibition in Article 5.1, while other Members have reiterated their preference for a list of strictly prohibited subsidies, in respect of all or some of the subsidies listed under Article 5.1.

Article 5.1.1

52. Moving to the qualifier of the provision. As you know, the prohibition in Article 5.1 is qualified by Article 5.1.1, which provides that a subsidy is not inconsistent with Article 5.1 if the subsidizing Member demonstrates that measures are implemented to maintain the fish stocks at a biologically sustainable level, which is defined in footnote 10.

53. From our discussions and my consultations in the past weeks, it is clear that this provision remains one of the main areas of interest for many delegations. However, Members continue to have different views: some see it as too lenient, some others see it as too strict, and some think it is balanced even though it is not their preferred solution.

54. However, based on our discussions and the linkages brought to my attention by some Members, any revisions to Article 5.1.1 at this point risk disturbing the balance of the entire text, as tweaking the sustainability-based qualifier in the prohibition would have an impact on other elements in the text, particularly the SDT provision in Article 5.5. Hence, this provision remains unchanged.

55. You will note, however, that footnotes 10 and 9, defining the "biologically sustainable level" of a stock in Articles 5 and 4 respectively, have been revised.

56. As we have heard frequently in our discussions, one reason why some Members have seen Article 5.1.1 as too strict is that in their view the definition in footnote 10 was too rigid or narrow, and might not cater for all situations, such as stock assessments that are not based on maximum sustainable yield (MSY). These could be, for example, stock assessments for small-scale or multi-species fisheries, or stock assessments that due to other socio-economic reasons are not conducted using MSY. While it was never the intention of these footnotes to create a hierarchy or presumption in favour of MSY, some Members nevertheless saw them in this light.

57. To alleviate these concerns, footnotes 10 and 9 have been revised to clarify the absence of a presumptive preference for MSY.

58. The insertion of the language "reference points such as" before the term "MSY" highlights that "MSY" is only one of the possible reference points that might be used to determine a biologically sustainable level. Furthermore, the term "alternative reference points" has been changed to "other reference points", to underline that the reference points based on different indicators are a distinct category of reference points, independent of the concept of MSY.

59. The objective of these changes is to make clear that Members whose fisheries management systems are not MSY-based will be able to implement this prohibition, including its qualifier in Article 5.1.1. I believe that this change can help to reduce gaps and increase convergence in this important area of the text.

60. Finally, I do recall that some Members have expressed concerns over whether indicators based on "traditional knowledge" would be captured by the term "other reference points". My understanding is, in short: yes, they would be. While we cannot possibly list all potential reference points or indicators in this footnote, I understand based on the FAO's *Code of Conduct for Responsible Fisheries* that traditional knowledge could be the basis for reference points for determining the biologically sustainable level, as the Code clearly recognizes the role that traditional knowledge can have in fisheries management. In particular, Article 6.4 of the Code, on General Principles, reads that "Conservation and management decisions for fisheries should be based on the best scientific evidence available, also taking into account traditional knowledge of the resources and their habitat."

61. In closing on Article 5.1, I should note that very recently a number of ideas and suggestions were made in respect of Article 5.1.1 and footnote 10, and these generated productive discussions which may help us to move forward as our work continues. The number and recent arrival of these ideas has meant that we have not yet fully discussed them so we will need to continue this work before we have clarity on what further adjustments to the provisions of Article 5.1 including Article 5.1.1 and footnote 10 will help us to increase convergence.

Articles 5.2 and 5.3

62. As you know, Articles 5.2 and 5.3 are intended to complement the main prohibition in Article 5.1 on subsidies that contribute to overcapacity and overfishing. Specifically:

- Article 5.2(a) is an additional prohibition on subsidies contingent upon, or tied to, fishing outside the subsidizing Member's jurisdiction;

- Article 5.2(b) provides for an exception from this prohibition for the non-collection of government-to-government payments under access agreements, provided that the requirements in Article 5.1.1 are met; and

- Article 5.3 is a prohibition on all subsidies to fishing in the high seas – that is, outside of any Member's jurisdiction and outside the competence of any RFMO/A.

63. These provisions were discussed extensively in the last several weeks, and Members' views continue to diverge on these issues. On Articles 5.2(a) and 5.3, a number of Members support keeping both in the text, as-is, while for others the priority is on Article 5.3. Other Members want either to delete both or to limit them to what in their view are the most harmful subsidies, such as fuel subsidies, whether specific or not. Given this wide divergence of views, I found no basis for proposing changes that would increase convergence. We will need to continue discussing these provisions.

64. This brings us to Article 5.2(b), an exemption from the prohibition in Article 5.2(a) for the non-collection of government-to-government payments under access agreements.

65. While the proponents of this text portray the current text of Article 5.2(b) as a narrow exception for a specific type of subsidy in this context, many other Members expressed negative views on this provision for different reasons:

- Some consider it too extensive since it would exempt from the prohibition the majority of fuel subsidies;

- Some consider it inconsistent with the underlying premise that subsidies that are contingent upon or tied to distant water fishing are harmful;

- Some consider that the notion of sustainability contained in this provision is relevant for Article 5.1 instead, and that a sustainability-related qualifier – whether under access agreements or otherwise – is already provided for in Article 5.1.1; and

- Some are of the view that fishing licenses and quota allocations are intrinsic tools of fisheries management and thus should be excluded from all of the disciplines, not just from Article 5.2(a).

66. To reflect the fact that numerous Members have proposed deleting Article 5.2(b) for various reasons, square brackets have been placed around this provision. In addition, as you know, the issue of fee collection or non-collection under access agreements is related also to the broader issue of fishing licenses and quota allocations that I just noted now. In all, the brackets are meant to be a marker to note that we need to continue discussing all of these issues in order to find an acceptable landing zone.

Article 5.4

67. Concerning Article 5.4 on subsidies for a vessel not flying the flag of the subsidizing Member, this Article remains unchanged.

68. While some Members consider this provision to be necessary, and have expressed concerns over the fact that it remains in square brackets, others reject the presumption underlying this proposed prohibition and are pressing strongly for its deletion.

69. I am aware that there have been discussions between some concerned delegations. I also note that a proposal was recently received on this topic. I can only encourage this engagement between delegations to continue.

Article 5.5

70. Turning to Article 5.5, concerning the SDT in the overcapacity and overfishing pillar. This is by far the most commonly identified area of concern for many delegations and a number of Members consider the SDT provisions in Article 5 to be problematic. In particular, the text in ALT 1 has not attracted convergence, and that in ALT 2, while having a certain support, is considered imbalanced by a range of Members, for opposite reasons – some considering it too narrow and rigid and, at the opposite end of the spectrum, others considering it too broad and permissive.

71. This divergence seems to reflect a fundamental difference in views on the purpose of SDT. Some Members see SDT as a means to achieve implementation of the overall sustainability mandate, while others see it as a basis to be definitively shielded from the disciplines for developmental reasons.

72. In this debate, it has become increasingly clear that the area of subsistence, artisanal and small-scale fisheries is a top priority for many developing Members and where most of the concerns lie. The concerns raised over the treatment of these fisheries in Article 5.5 ALT2 of W/276 focus on both the conditions for accessing the relevant SDT in Article 5.5(b) and its time-bound nature. A broad range of developing Members have said that these conditions would not be feasible for them to meet in respect of these fisheries, that time would not resolve these issues, and that these fisheries being small, they and any subsidies to them would have a limited impact compared with subsidies to industrial fisheries. For these reasons, many developing Members have argued that subsidies to these types of fisheries should be given a permanent exemption from the disciplines.

73. Over the past weeks, I have noticed that the debate over subsistence, artisanal and small-scale fisheries and the other SDT provisions pertaining to other fisheries, that is, industrial fisheries, have at times become blended together in a way that has made discussions hard to follow and impeded progress. I also have detected an increased willingness on the part of non-demandeurs to consider more flexible treatment for subsistence, artisanal and small-scale fisheries than was contained in W/276. That said, concerns remain over the descriptive characteristics that we have been using to refer to these fisheries, namely as "low income, resource-poor or livelihood" fisheries. In particular, some Members consider these terms to be too loose to establish meaningful limits on the fisheries to which subsidies potentially could be provided on the basis of these flexibilities.

74. On the basis of all of this, I have made certain changes to Article 5.5(b) aimed at making it more flexible. My reading of the situation is that providing for more flexibility for this fisheries sector will help us to make progress on the rest of the SDT provisions, where the discussion has not really moved.

75. To be specific, time limited duration has been removed from Article 5.5(b). This would allow all kinds of subsidies, including those listed in Article 5.1 to these types of fishing to be maintained indefinitely. As such, the language in the extension mechanism in Article 5.5(d) was modified to only refer to Article 5.5(c) and no longer to Article 5.5(b). To address the concern over the openness of the descriptive language, as in Articles 3.8 and 4.4, the phrase now refers to low income, resource-poor and livelihood fishing, making these cumulative and not alternative. The 12 nautical mile limit has been retained, with the replacement of "within" by "up to". Thus, while the duration of the exemption is indefinite, the scope is intentionally narrow. There were no other changes to Article 5.5 ALT 2 compared to what was in W/276.

76. The changes to Article 5.5(b) are intended to see if, by addressing a deep concern expressed by many developing Members about their artisanal fisheries sectors, this can help Members engage in a more convergence-oriented way on the rest of the text, including on the remaining SDT provisions.

ARTICLE 6

77. Article 6 contains two paragraphs specific to LDC Members. As a purely technical point, square brackets around the title of the provision have been removed since only Article 6.1 is bracketed and Article 6.2 does not have brackets around it. No other changes have been made to this Article, acknowledging in any case that it needs further discussion.

ARTICLE 7

78. Article 7 deals with technical assistance and capacity building. I would recall that until now, Article 7 has contained text taken from a proposal and that that text has not been discussed recently, nor has it changed at all since the first consolidated document in RD/TN/RL/126.

79. Concerning the drafting suggestions that have been introduced in this Article, I would like to ask the DG, Dr. Ngozi, if she would like to explain this new language to you.

80. **[DG takes the floor – See Annex I]**

81. Thank you, DG.

ARTICLE 8

82. Turning to Article 8 on notification and transparency

83. During our work on notification and transparency in the past few weeks, as well as before that, Members have highlighted the critical importance of transparency for the fisheries subsidies disciplines.

84. Members generally support the idea that the notification and transparency requirements for the disciplines should be in addition to the existing rules under the SCM Agreement. In the revised text, this has been further clarified by the insertion of the language "Without prejudice to Article 25 of the SCM Agreement" at the beginning of Article 8.1.

85. An issue that has been raised frequently and also is addressed in changes in the new text is the concern of many developing country members that the transparency and notification requirements in Article 8 are overly burdensome to them and that these Members might find it difficult to provide additional information under Articles 8.1(a) and 8.1(b) as a part of the regular biennial notification cycle under Article 25 of the SCM Agreement.

86. To respond to these concerns, the identical footnotes 16 and 17 attached to Article 8.1(a) and Article 8.1(b), respectively, have been included to clarify that developing country Members, including LDC Members, may notify this additional information every four years, instead of every two years as is the practice under Article 25 of the SCM Agreement.

87. Another change to Article 8 is the addition of new Article 8.5, which aims to ensure transparency of RFMO/As in the draft text. The language included has been suggested by several Members during our discussions on this provision. These Members have expressed concerns regarding transparency, best practices, and activities and decisions of RFMO/As.

88. The new suggested language provides that Members shall provide annual notifications of RFMO/As to which they are parties. The information to be notified for each would be:

- The text of the legal instrument instituting that RFMO/A;
- The area and species under its competence;
- The information on the status of the managed fish stocks;
- A description of the conservation and management measures;
- The regime governing the adoption of IUU fishing determinations; and

- The updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing.

89. And finally, the text provides that the Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to Article 8.5.

90. Of course, this provision is placed in square backets as it can benefit from further discussion.

91. These are the only changes compared to Article 8 of W/276. The remaining provisions are the same as they were in that document.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

92. Coming to Article 9, as you know, the need, as well as the specific text, for the institutional arrangements in this Article depend on whether the disciplines will be a standalone agreement or an annex to the SCM Agreement. While this issue remains outstanding, the current text of this Article was developed on the working basis of the disciplines taking the form of a standalone agreement, and on this basis, we were able to engage on the substance of this text.

93. Of course, this does not prejudge in any way our decision on the form of the disciplines, but our work was aimed at making progress on the substance so as to allow us to move quickly once that decision is made.

94. Overall, I sensed that Members were generally supportive of the current text in substance. Of course, Members had different views on one particular text or another. These include:

- Whether Article 9.2, which requires Members to inform the relevant WTO body of the measures the Member has taken to implement the disciplines, and Article 9.3, which requires Members to inform their fisheries regimes, are adequate;

- Whether the content of Articles 9.2 and/or 9.3 is already covered under the requirements under Articles 3.6 and 3.7; and

- Whether the frequency of the biennial review of the notifications under Article 9.4 is appropriate.

95. These are of course not an exhaustive list of all the comments we heard, and we will need to keep them in mind as we finalize this text once the form of the disciplines is decided.

96. In addition, one concern that we heard from more than a few Members was on Article 9.5, which requires the relevant WTO body to maintain close contact with other relevant international organizations. Some Members found this formulation to be too open-ended and sought to further clarify the purpose of the cooperation envisaged under Article 9.5, similar to Article 12.3 of the SPS Agreement.

97. To this end, one suggestion was aimed at using this provision to allow the relevant WTO body to engage in cooperation with the FAO and RFMO/As, such that their work that is relevant to the fisheries subsidies disciplines could be better understood. This suggestion has been incorporated in the revised text. However, while the idea of clarifying the purpose Article 9.5 had some support, we would need more specific discussion about the text that was added. As such, the added text is in square brackets.

ARTICLE 10

98. Article 10, which remains unchanged, provides that the provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the DSU, and Article 4 of the SCM Agreement, shall apply to the disputes under the fisheries subsidies discipline.

99. The specific text of the dispute settlement provision in Article 10 depends on whether the disciplines become a standalone agreement or an annex to the SCM Agreement. However, this is

also an important topic to many Members and we have had several dedicated sessions on it since last fall.

100. Throughout this work, there was a general convergence on the idea that our point of departure is the dispute settlement procedures under the SCM Agreement that apply to the prohibited subsidies in that Agreement. This was because these rules would apply by default if the fisheries subsidies disciplines were to become an annex to the SCM Agreement. But also, it was because many Members see that the rules for prohibited subsidies under the SCM Agreement would be a good reference for the subsidies prohibited under the fisheries subsidies disciplines.

101. This is not to say that there was full convergence on the current text. As you will recall from our recent discussions on this topic, some Members consider that certain changes to the default dispute settlement rules could be considered. Just to name a few:

- Some Members questioned whether the expedited procedures for Article 4 of the SCM Agreement would be appropriate in the fisheries subsidies context;

- Some Members have suggested ideas on specific countermeasures for fisheries subsidies on the basis that "appropriate countermeasures" in Article 4.10 of the SCM Agreement is linked to economic, rather than sustainability, concerns;

- Some Members would like to see the notion of "nullification and impairment", or non-violation claims and situations claims excluded from the application of Article 10, because they do not find them to be relevant or useful in the fisheries subsidies context; and

- Some Members want other specific rules such as for standard of review and panel's information seeking authority.

102. In the meantime, many Members oppose some or all such changes because they find that existing dispute settlement rules are adequate and sufficient.

103. All of these ideas are very helpful and we should keep them in mind when we finalize the text once the form of the discipline is decided. However, despite having discussed all of these ideas on several occasions now, each is opposed by some and none has attracted wide support – which is why this text remains unchanged.

ARTICLE 11

104. Turning now to the last Article, Article 11 on the final provisions. As explained before, this Article contains four paragraphs that do not belong readily to any of the other provisions, or that apply to some, but not all, of the substantive pillars.

Article 11.1

105. Article 11.1 clarifies that nothing in the disciplines shall be construed or applied in a manner that will affect the rights of landlocked developing country (LLDC) Members. This text was introduced in 126/Rev.2 based on the proposal by the LLDC proponents in RD/TN/RL/130, and the text itself remains unchanged in the new text.

106. During our discussion of this text last week, many Members raised various questions about this provision, such as what rights are intended to be protected and whether the provision is needed at all. Some also suggested textual language to modify or replace it. This is a discussion we need to have, and in order to indicate this, the text of Article 11.1 has been placed in square brackets.

Article 11.2

107. Article 11.2 is a provision for a "special care" and "due restraint" requirement when granting subsidies to fishing where the status of the stocks in question is unknown. This text remains unchanged from W/276 as Members are generally supportive of this text.

108. I did, however, hear some ideas to amend the text. For example, some Members wondered whether we need both "special care" and "due restraint", or whether either one will serve the purpose. Some Members did not like the reference to "stocks the status of which is unknown" and preferred "unassessed stocks". In addition, some Members considered the term "shall" to be too strong and suggested reformulating it with the word "should".

109. These suggestions could not be reflected in the text as only a limited number of Members commented on them, and so for now I did not find a sufficient level of support for any of the suggestions. That said, I of course took careful notes of all these comments as they will be valuable when we intensify our text-based work.

Article 11.3

110. Article 11.3 is an exception for disaster relief. This text remains unchanged from W/276, except for the addition of a footnote that was added to the term "disaster" appearing in the chapeau. This footnote provides that "For greater certainty, this provision does not apply to economic or financial crises."

111. As you would recall, before W/276, this text in /126 documents had "natural disaster" with the term "natural" in square brackets. However, in W/276, the qualifier "natural" was deleted because no one had yet provided a clear rationale for excluding certain man-made disaster scenarios, such as oil spills.

112. While this change was welcomed by many Members during our discussion of this text, some Members were concerned that leaving the term "disaster" without any elaboration could make this provision a loophole. In particular, they were concerned that an economic or financial event could be characterized as a "disaster" under this Article.

113. This is of course not the intention, which was to allow exceptions where there is a physical disaster affecting the marine environment – such as natural disasters like hurricanes and tsunami, and man-made disasters like oil spills. To clarify this, footnote 19 has been added to exclude events that are economic or financial in nature.

Article 11.4

114. Finally, Article 11.4 is a provision that reflects Members' views that our fisheries subsidies work here at the WTO, and anything that flows from that work, should not have any impact on issues involving territorial claims and delimitation of maritime boundaries. This text reflects the idea of two "firewalls" that has gained a level of support: subparagraph (a) is aimed at ensuring that the fisheries subsidies disciplines in the WTO, including results of dispute settlement, could not be used outside in other international fora; subparagraph (b) is aimed at ensuring that WTO panels addressing claims under the fisheries subsidies disciplines not address any issues of territorial claims and delimitation of maritime boundaries.

115. This text reflects one change from the W/276 text, which is replacing the terms "territoriality" and "delimitation of maritime jurisdiction" with "territorial claims" and "delimitation of maritime boundaries" respectively. This is meant to be a purely technical change, to reflect the view that the terms "territoriality" and "maritime jurisdiction" are not recognized terms.

116. Other than this, the text remains unchanged as it captures the common view that the issues concerning territorial claims or maritime boundaries should not be addressed by the WTO. However, given that this is understandably an extremely sensitive topic, some Members continue to have strong views on their preferred approaches.

- Some dislike any text on the issue on the basis that this principle already applies to all WTO Agreements, and that adding a specific reference in the fisheries subsidies disciplines might raise questions in Agreements that do not have a similar provision. As an alternative, these Members suggest addressing this issue outside of the four corners of the disciplines, such as in a Ministerial Declaration.

- Some support making the termination of a claim or of an entire dispute under subparagraph (b) automatic when the issues of territorial claims or delimitation of maritime boundaries are asserted by a party, such that a panel does not even consider whether a claim would require it to address any issues of territoriality or delimitation of maritime jurisdiction; and

- Some think that the first firewall in (a) is enough and that the a more specific firewall to the panel in (b) could be removed.

117. These are of course not all the comments I heard. For example, some Members want to move (b) to Article 10, seeing it as a dispute settlement provision, and some want to broaden the application of (b) to all proceedings envisaged in the WTO dispute settlement system in addition to the panel process. We will of course keep these considerations in mind as we move forward.

CONCLUSION

118. This brings me to the end of the revised text. Thank you for bearing with me, I know that was a lot of information. Shortly after this meeting, the revised draft text will be circulated to you with my explanation as an addendum, as has become our customary practice.

119. Usually this is when I give you an indication of next steps. However, we all know what those are – it is the 15 July Ministerial level meeting. As I reported at last week's TNC meeting, this Friday the DG and I will be sending Ministers our specific questions for the meeting on 15 July. In the meantime, it would be an opportunity for you and your colleagues to help your Ministers become familiar with the draft text and the issues and discussion questions, so that we can have a meeting that is fruitful for all our Ministers.

120. And between now and 15 July I will continue to reach out to delegations in different configurations, again with a view to preparing the ground for that Ministerial-level meeting.

121. Also, it goes without saying that my door is always open and I would be delighted to discuss with you the revised draft text, the process, or any matter you may have in your mind.

122. Before closing, I would like to invite Dr. Ngozi, to provide some closing remarks if you so wish.

123. **[DG intervention – see Annexe I]**

124. Thank you Dr. Ngozi for your reflections.

125. With this, I look forward to seeing you again soon. Thanking the interpreters for their hard work today, I would now like to close this meeting. The meeting is now closed.

ANNEX I

STATEMENT FROM THE DIRECTOR-GENERAL

Introduction of changes to Article 7

1. Thank you very much Santiago and good morning excellencies. It's a great opportunity to take part in the presentation of the new text, which is an important milestone on our way to the Ministerial meeting. And as Santiago said, it's been a tough few days with all the meetings and trying to find something more towards convergence.

2. For now, I just wanted to give you a bit of background on the drafting suggestions that have been introduced in Article 7 on Technical Assistance and Capacity Building. At then at the end of the meeting I will share of my thoughts about where we're going and what we need to do for the next few weeks so that we can make the most of the 15 July meeting.

3. On Article 7 you will see that the changes are aimed at making more explicit the mechanism through which we can assure that the necessary technical assistance and capacity building for implementation of the new disciplines will be provided to developing and least developed country Members. In particular, we now have specific language on the establishment of a WTO funding mechanism, in cooperation with other relevant international organizations such as the FAO and IFAD. As many of you are probably aware, for some time now I have been reaching out to Members about a funding mechanism to be run from the WTO. The purpose of the fund will be to coordinate and finance the provision of the TA that is needed to help developing and LDC Members adapt their domestic fisheries systems, so that these Members can both comply with the new rules and also take full advantage of the available flexibilities in the disciplines. I've seen first-hand from even along the West African coast the lack of capacity to be able to take advantage of these flexibilities. The potential donors with whom I have spoken have expressed considerable interest, and I also have had very good discussions with the FAO and IFAD, which are active in the area of fisheries. Both of these organizations have given very positive indications of interest and willingness to work with and support WTO in this important endeavour. I think both are staff are engaged in trying to work out exactly what this might mean. So again, the purpose of the suggested drafting changes is to put the TA provision into a more concrete form, based on what we are doing to set up this funding mechanism.

4. The main reason for doing this is that I've listened to many least developed countries, many developing country members who have explained the difficulties they've had with past TA and capacity building pledges, which in the end have turned out to be very difficult in practice and that has brought great skepticism every time we say we are doing TA and capacity building. So designing something different might actually work and help us achieve our objective.

Closing remarks

5. Thanks Santiago. I am sharing a few remarks from my side on where we are today, and where we still have to go. And before that, let me say that I continue to have a strong sense of optimism that we will conclude these negotiations, notwithstanding the differences that we see still need to be bridged. There is plenty of work to do, I admit that, but let me also say that this Negotiating Group has accomplished a lot. We are far, but we are close. And that is not a contradiction. I feel Members' shared sense of commitment and responsibility to this institution, not least through your sheer tenacity in continuing to engage in the really demanding programme of meetings that Santiago and all of us have been holding.

6. Regarding this revised text, and the nature of the changes, I can only echo what the Chair has said. The text reflects his best judgement – after listening to each and every one of you, and with your often extremely different opinions - on changes that can help to build convergence. We have met, virtually, every single day, at the end of the day, after the discussions, to go over where we are, and see what progress can be made. The history of these negotiations has shown time and time again that progress tends to come incrementally, and not through big bangs. So while the changes may look modest perhaps, I share Santiago's view that they are a very useful attempt at

pointing in the direction of more convergence, and that this text can be a good basis for the more detailed and really focused work that we will need to to do to conclude the negotiations. In this sense, the text should help Ministers to engage on 15 July in a way that will provide us the kind of push and political guidance that we need at this stage to be able to move towards conclusion.

7. With respect to what will happen between now and then, both Santiago and I will be reaching out and continuing the meetings and his door is open, ditto with myself trying to meet with different members in different configurations to listen carefully and prepare the ground as much as possible for the 15th of July and also to prepare the questions that we need to send to ministers. As you know, the discussion questions accompanied by contextual elements will be circulated at the end of the week so it's not much time. The aim of our activities will be to use these documents and the new text to try to clarify positions and identify as much common ground among Members as possible. I hope this would assist Ministers to engage substantively and constructively on 15 July. Having their guidance and having them involved politically an this stage is extremely useful and I hope it will help to propel us so that we can use our time efficiently after the ministers' meeting to move forward and finalize the text.

8. Remember the ambition and guidance for ministers of the APEC Group who themselves set the date of the end of July for us to conclude. I dare say there are many ministers, who in spite of the difficulties that have been spelled out to them, see the necessity and importance of really pushing forward on this. This is a charge that has been given to this organization, WTO, by the leaders of the world who put up the Sustainable Development Goals, and the targets were supposed to reach. I don't think we should forget this. We should bear this in mind. This is a duty, and a charge, given to us that we have to take seriously. So over the next two weeks, I ask you to be prepared to continue to join meetings in different configurations as much as you possibly can. Some of them might be with very short notice. You have been amazing in terms of your forbearance and fortitude. And all I can ask is that we continue this because I sense a change in mood and we should seize advantage of that mood to push towards concluding these negotiations. So thank you in advance. Let's keep our chins up and continue to roll up our sleeves.

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