



PROPOSED MC11 FISHERIES SUBSIDIES DISCIPLINES:

IMPLEMENTING SDG TARGET 14.6

Communication from Iceland, New Zealand, and Pakistan

The following communication, dated 26 April 2017, is being circulated at the request of the Delegations of Iceland, New Zealand, and Pakistan.

1 INTRODUCTION

1.1. There is a compelling need for the 11th Ministerial Conference (MC11) to continue the WTO's contribution to the 2030 Agenda for Sustainable Development and specifically Sustainable Development Goal (SDG) Target 14.6: 'By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation'.

1.2. The Ministerial Decision on Export Competition adopted at MC10 (WT/MIN(15)/45; WT/L/980) was a concrete deliverable that implemented part of SDG Target 2.B¹. Ministers also discussed fisheries subsidies disciplines at MC10 but ultimately failed to reach an agreement. WTO Members have since intensified negotiations in this area and it has become a candidate for delivery at MC11. A repeat failure would be damaging not just for the marine environment and millions of livelihoods that depend on healthy fish stocks, but also for the WTO itself. Globalisation and the multilateral trading system are being questioned more now than perhaps at any time in recent history. This submission proposes an effective and tangible response to what is a pressing environmental problem and which would reinforce the important contribution that the WTO makes to peoples' lives.

2 CONTEXT

2.1. Since WTO negotiations on fisheries subsidies began over 15 years ago the importance of delivery in this area has grown. The state of the world's fisheries have deteriorated since negotiations began. The continuation of this trend is seen in the most recent reporting by the United Nations Food and Agriculture Organization (FAO) in its 2016 report on the State of World Fisheries and Aquaculture (SOFIA) with 31% of global stocks reported as overfished. There is also diminishing room for growth in catches through increased fishing effort, with 58% 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 factor².

¹ SDG Target 2.b: Correct and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round.

² 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.

2.2. The problem of fisheries subsidies goes beyond their environmental impacts, as illustrated by the SOFIA reporting: fish now accounts for almost 17 percent of the global population's intake of protein - in some coastal and island countries it can top 70 percent; 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; and fisheries and aquaculture support the livelihoods of 10-12 percent of the world's population. Since 1990 employment in the sector has grown at a faster rate than the world's population and in 2014 provided jobs for some 57 million people engaged in capture fisheries and aquaculture. Fish is also among the most traded food commodities worldwide.

2.3. 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 subsidies contribute to the US\$80 billion per year loss estimated by the World Bank in the fisheries sector as both a direct cost and by contributing to overfishing. Fisheries are a key resource for many Members, and subsidies can undermine the sustainable use of their stocks. 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.

2.4. There have been growing calls over the years from World Leaders, UN agencies, civil society³ and WTO Members across the development spectrum for WTO action. The continued deterioration in the global resource base and the contribution of subsidies to the problem led to the call for action in the 2030 Agenda. Previous UN conferences and summits were reaffirmed, including Rio+20 and the World Summit on Sustainable Development (WSSD) which feature important fisheries subsidies reform commitments, together with the specific SDG Target 14.6.

3 ELEMENTS

3.1. This submission proposes an MC11 outcome that implements all elements of SDG Target 14.6. Legal text is proposed in what are some of the more mature areas in the Rules Negotiating Group (RNG) discussions while providing for areas where discussion is still being deepened but also needs to be addressed in an MC11 outcome. The submission draws heavily on recent submissions and discussions in the RNG including:

- MC10 Fisheries Subsidies Ministerial Statement issued by 28 Members (WT/MIN(15)/37/Rev.1);
- European Union (EU) proposal for WTO disciplines on fisheries subsidies (TN/RN/GEN/181);
- African Caribbean and the Pacific (ACP) principles and elements for concluding negotiations on fisheries subsidies rules in the WTO (TN/RL/GEN182);
- Peru, Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay framework to guide the multilateral negotiations to eliminate harmful fisheries subsidies (TN/RL/GEN 183);
- Least Developed Countries (LDC) elements for WTO fisheries subsidies disciplines (TN/RL/GEN184); and
- Japan paper on the Roles of RFMOs and National Fisheries Management Authorities in Maintaining Fisheries Resources and their Implications for Developing Disciplines in the WTO (JOB/RL/8).

3.2. Existing fisheries instruments, institutions and process are also drawn on and supported in the drafting and implementation of the proposed disciplines. The fundamental need and obligation for States to cooperate in the management of fisheries resources underpins the approach. It also avoids duplicating what already exists, provides for future developments and guards against the WTO playing a fisheries management role. Based on this, the proposal contains the following elements:

³ See for example UNCTAD-FAO-UNEP Joint Statement, Fourteenth session of the United Nations Conference on Trade and Development, Nairobi, Kenya, 17-20 July 2016; WWF WWF Preliminary Comments On The current negotiations to end harmful fisheries subsidies in the WTO, March 2017 http://awsassets.panda.org/downloads/wwf_preliminary_comments_wto_fisheries_subsidies_march_2017_1.pdf

- (a) Definitions;
- (b) Effective prohibitions;
- (c) Appropriate and effective special and differential treatment;
- (d) Transitional arrangements;
- (e) Standstill provision;
- (f) Anti-circumvention; and
- (g) Transparency, monitoring and review provisions.

3.3. To maximise the effectiveness of an outcome it should be legally binding and subject to WTO dispute settlement. This should include provision for countermeasures in the case of violations in the form of suspension of access of fishing vessels to port facilities for landing, transshipping or processing fish. A Protocol of amendment will therefore need to be included in the final Ministerial Decision pursuant to the Marrakesh Agreement. The proposal however is made without prejudice to the precise form of the final outcome as this will be driven by its content which continues to be subject to discussion amongst the WTO membership.

A Definitions

3.4. A limited number of definitions are proposed to provide the necessary clarity of the proposed disciplines. Ultimately, the need and nature of any definitions will be determined by the nature of the disciplines. The definitions proposed are to the extent possible based on definitions and processes used in existing fisheries instruments and proposals.⁴ Further explanation of these and other terms can be found in the Communication from New Zealand: 'Technical Paper on Fisheries Subsidies' (TN/RL/W/261, 29 July 2015).

B Prohibitions

3.5. Taking into account other WTO submissions, prohibitions are proposed on:

- i. subsidies provided to illegal, unreported and unregulated (IUU) fishing;
- ii. subsidies to fishing activities where stocks are not assessed or are assessed as being overfished; and
- iii. subsidies provided to fishing activities on the high seas and in the waters of another Member.

3.6. These three prohibitions would apply to all specific subsidies of all Members. Members would not be able to introduce any new subsidies in these areas or maintain existing subsidies beyond a specified limited transitional period. All specific fisheries subsidies not subject to new prohibitions would remain actionable under the Agreement on Subsidies and Countervailing Measures (SCM).

3.7. These prohibitions respond to some of the most acute parts of the sustainability problem. They include the most obvious and simple prohibitions around which all Members should be able to agree and represent areas where international cooperation is especially important i.e. the management of shared stocks.

3.8. The IUU related prohibitions draw on submissions to date, including those of the EU and Japan which make the case for a subsidy prohibition based on existing IUU vessel lists in the same manner as port entry is denied to IUU vessels under the FAO Port State Measures Agreement.⁵ As relevant as it is, such a prohibition only applies after IUU activity has been comprehensively detected. It is therefore proposed that subsidies also be prohibited in the event of fishing for

⁴ Including the FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing; the FAO Port State Measures Agreement; the EU proposal; and using existing credible stock assessments as reference points.

⁵ See Article 9.4 of the FAO Port State Measures Agreement.

shared stocks in the absence of membership to a relevant regional fisheries management organisation (RFMO).

3.9. The prohibition where stocks are not assessed or are assessed as being overfished addresses situations where subsidies are being provided where fisheries management is evidently absent or ineffective. Moreover, States already have obligations⁶ to assess stocks and ensure they are at or above sustainable levels therefore such a prohibition would support these existing commitments and would not require any giving up of 'policy space'. As part of wider enhanced transparency it is proposed that the results of stock assessments be included in Members' regular subsidy notifications but it is not proposed that the assessments be subject to approval by the WTO. It is also recognised that there may be a place for targeted capacity building for the purposes of stock assessments.

3.10. The prohibition on subsidies to fishing activities on the high seas and in the waters of another Member responds to the LDC and ACP groups identifying them as being particularly harmful and proposing respectively that 'disciplines should target primarily industrial fishing on a large scale' and that 'as a priority, disciplines should target subsidies provided to large scale commercial or industrial fishing and subsidies to fishing activities outside of the Member's maritime jurisdiction, (i.e. in the high seas or in the EEZ of another Member e.g. through access agreement)'.⁷

3.11. As important and necessary as these prohibitions are, they would not themselves adequately implement SDG Target 14.6. For example, they would not address subsidies to fishing in waters under the jurisdiction of a subsidising Member (i.e. within its exclusive economic zone) unless that fishing was IUU, or the stocks were not assessed or were assessed as being overfished. An estimated 88%⁷ of global catch comes from national jurisdictions therefore it is imperative that more complete prohibitions be established to prevent these stocks being overfished.

3.12. Additional legal text is not proposed at this stage because further discussions are needed in the RNG on how to frame prohibitions beyond those proposed here. The proposals of other Members however are not mutually exclusive. For example, prohibitions like those proposed by the EU on some forms of capacity enhancing subsidies; approaches that might focus on large scale fishing; and an adapted Trade Facilitation Agreement approach are all compatible with this proposal and should be subject to further discussion for delivery at MC11.

C Special and Differential Treatment

3.13. Special and differential treatment (S&DT) needs to be proportional to, and appropriate for, the disciplines and not undermine their effectiveness. The three proposed prohibitions should apply equally to all subsidies from all Members. It would not be appropriate to accord S&DT on these prohibitions. S&DT for developing Members, in particular for Least Developed Countries (LDCs), may however be appropriate in the context of additional prohibitions, the transparency provisions or the transitional arrangements, including targeted capacity building.

D Transitional Arrangements

3.14. Some Members may have existing subsidy programmes that will not be in conformity with the prohibitions. To that end, similar to the approach taken under Article 28 of the SCM Agreement and consistent with the SDG Target 14.6, a limited transitional arrangement is proposed to provide Members until 2020 to bring their programmes into conformity with the new prohibitions. We are also open to considering appropriate S&DT in this context, in particular for LDCs. This could be supported by targeted capacity building to support Members in bringing their programmes into conformity with the prohibitions, for example related to stock assessments.

⁶ For example, Articles 61 and 119 of the UN Law of the Sea Convention; Article 7 of the FAO Code of Conduct for Responsible Fisheries.

⁷ *Winners and losers in a world where the high seas is closed to fishing*, 12 February 2015. U. Rashid Sumaila, Vicky W. Y. Lam, Dana D. Miller, Louise Teh, Reg A. Watson, Dirk Zeller, William W. L. Cheung, Isabelle M. Côté, Alex D. Rogers, Callum Roberts, Enric Sala & Daniel Pauly. *Scientific Reports* 5, 8481 <https://www.nature.com/articles/srep08481>.

3.15. In the case of prohibited subsidies provided to IUU fishing, it would seem inappropriate to provide a transitional period.

E Standstill

3.16. SDG Target 14.6 includes a standstill commitment, a concept featuring in Rio+20. Unless comprehensive prohibitions are established on all forms of fisheries subsidies which contribute to overcapacity and overfishing it would seem prudent to include 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) which was reaffirmed by the 2030 Agenda (paragraph 11). It is therefore proposed to establish and monitor a standstill commitment in the WTO that covers all subsidies which contribute to overcapacity and overfishing not covered by the prohibitions.

F Anti-circumvention

3.17. It will be important in any disciplines to guard against circumvention. To this end, an additional discipline would be necessary to clarify that the new disciplines are attributable to the Member conferring them, regardless of recipient nationality, vessel flag, or the rule of origin.

G Transparency, monitoring and review

3.18. Enhanced reporting requirements are proposed to enable effective monitoring, surveillance and enforcement. It is necessary that this support the evaluation of the trade and resource effects of fisheries subsidies programmes. Given the importance of addressing the resource impacts of subsidies it is proposed that Members also provide information on subsidies to the fisheries sector beyond those defined in Articles 1.1 and 2 of the SCM Agreement. The proposed elements are considered a minimum requirement and additional elements may be required depending on the final disciplines. We are also open to considering appropriate S&DT in the context of enhanced transparency, in particular for LDCs.

Definitions

"illegal, unreported and unregulated fishing (IUU)" is to be understood to have the same meaning as paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organisation (FAO).

"operator" includes any person or enterprise involved in the operation, management or ownership of a vessel.

"fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.

"fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish, as well as the provisioning of personnel, fuel, gear and other supplies.

"overfished" is where a fish stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available. Fish stocks that are recognized as overfished by the national jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation shall also be considered overfished.

Article 1

1. 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:

1.1 Subsidies in connection with illegal, unreported and unregulated (IUU) fishing, including:

1.1.1 any subsidy to an operator or vessel identified in an IUU fishing list of the flag State, the subsidizing Member, a Regional Fisheries Management Organization or Arrangement, or a relevant international organization;

1.1.2 any subsidy to fishing for fish stocks managed by a Regional Fisheries Management Organization or Arrangement where the subsidizing Member or vessel flag State is not a Member of the organization or arrangement.

1.2 Subsidies in connection with fishing and fishing related activities involving fish stocks that have not been assessed or have been assessed to be in an overfished condition.

1.3 Subsidies in connection with fishing and fishing related activities in areas beyond the national jurisdiction of the subsidizing Member.

[1.4 Placeholder: additional prohibitions beyond Article 1.1-1.3 shall be subject to further discussion amongst the WTO membership in the RNG for delivery at MC11. Appropriate S&DT for developing and least-developed Members that does not undermine the effectiveness of the disciplines would be an integral part of these negotiations.]

Article 2

2.1 In relation to subsidies that are not prohibited by Article 1, no Member shall introduce new, or extend or enhance existing, subsidies within the meaning of Article 1.1 of the SCM Agreement, to the extent they are specific within the meaning of Article 2 of the SCM Agreement, that contribute to overfishing or overcapacity.

Article 3

3.1 A subsidy shall be attributable to the Member conferring it, regardless of the flag of the vessel involved or the application of rules of origin to the fish involved.

Article 4

4.1 Members shall notify as part of their regular notifications under Article 25.3 of the SCM Agreement the following information:

- (a) programme name;
- (b) legal basis and granting authority for the programme;
- (c) catch data by species in the fishery for which the subsidy is provided;
- (d) status of the fish stocks in the fishery for which the subsidy is provided (for example, overfished, fully fished, underfished);
- (e) fleet capacity in the fishery for which the subsidy is provided;
- (f) conservation and management measures in place for the relevant fish stock; and
- (g) total imports and exports per species.

4.2 Members shall also provide information in relation to other subsidies granted to the fisheries sector, for example fuel subsidies.

[4.3 Placeholder: Appropriate S&DT that does not undermine the effectiveness of the disciplines may be considered.]

Article 5

5.1 The Committee on Subsidies and Countervailing Measures shall hold a dedicated biennial review of Members' implementation of this Agreement, the nature and extent of Members' subsidy programmes, and the related fish stock status, production and trade. This shall be informed by a summary from the Secretariat of Members' notifications complemented by relevant information provided by Members to the WTO Secretariat and information from other international organisations.

5.2 The Committee shall review the operation of this Agreement after three years, and periodically thereafter.

Article 6

6.1 Existing subsidy programmes which are inconsistent with Articles 1.2-1.4 shall be brought into conformity by 2020. No Member shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiry.

[6.2 Placeholder: Appropriate S&DT that does not undermine the effectiveness of the disciplines may be considered, including capacity building to bring programmes into conformity with the prohibitions.]
