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**Negotiating Group on Rules**

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## **PROPOSAL FOR DISCIPLINES ON FISHERIES SUBSIDIES**

*Communication from Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay*

The following communication, dated 24 May 2017, is being circulated at the request of the Delegations of Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay.

*Members hereby;*

*Considering* a growing consensus within the international community has been emerging on the need to act to prevent the harmful impacts of certain fisheries subsidies on sustainability of marine resources. That understanding was reflected in Paragraph 173 of the outcome document of the United Nations Conference on Sustainable Development, 'The future we want' and in the recent multilateral mandate of the 2030 Agenda for Sustainable Development of the United Nations, in which Heads of State and Government agreed on the Sustainable Development Goals (SDGs) 14.6;

*Recognizing* the urgent need to eliminate illegal, unreported and unregulated fishing and prohibit certain forms of subsidies that contribute to overfishing and overcapacity;

*Acknowledging* that appropriate and effective special and differential treatment for developing and least-developed country Members should be an integral part of the World Trade Organization fisheries subsidies negotiation;

*Fulfilling* the fisheries subsidies' goals will be the most relevant WTO contribution to trade and environment, representing at the same time an important contribution to food security and development;

*agree to establish effective disciplines on fisheries subsidies as follows<sup>1,2</sup>:*

### **1 DISCIPLINES<sup>3</sup>**

1.1. No Member shall grant or maintain any of the following subsidies<sup>4</sup> within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM) that are specific within the meaning of Article 2 of the SCM Agreement:

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<sup>1</sup> This instrument shall have no legal implications regarding, territoriality or delimitation of maritime jurisdictions.

<sup>2</sup> Any fish-stock assessment report or any technical report issued by a regional fisheries management organization shall only have effects for the purposes of the present instrument and its clauses and shall have no legal implications over territorial disputes or delimitation of maritime jurisdictions, or be interpreted as a change in the position of the parties involved in such disputes with regard to sovereignty or maritime jurisdiction, and cannot be invoked as recognition of such organizations on disputed areas.

<sup>3</sup> Except for disciplines for IUU fishing, subsidies referred to in this instrument shall not be prohibited when limited to the relief of a particular natural disaster, provided that the subsidies are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery, and/or the affected fleet to its pre-disaster state, up to a sustainable level of fishing capacity as established through a science-based assessment of the post-disaster status of the fishery.

### 1.1.1 Related to IUU<sup>5</sup> fishing

Subsidies conferred to any fishing vessel<sup>6</sup> or operator<sup>7</sup> of a fishing vessel engaged on IUU fishing activities. Such fishing vessels or operators shall be determined by:

- i. a Regional Fisheries Management Organization (RFMO), which the Member is Party to; in accordance with the rules and procedures of that organization and; in conformity with international and domestic law of the concerned Member; or,
- ii. each Member in accordance to its national legislation.<sup>8,9</sup>

### 1.1.2 Related to Overfishing

- a. Subsidies for fishing<sup>10</sup> that negatively affect<sup>11</sup> fish stocks that are in an overfished condition.<sup>12</sup>

In order to bring any subsidy programs into conformity with the obligations provided in this provision, developing and least-developed country Members, that at [the time of entry into force/adoption] of this instrument, have not completed; or, need to update the information related to the status of the fish stocks in the fishery for which the subsidy is provided, shall be granted with a period of time of [X] and [Y] years, respectively, after entry into force, subject to comply with the transparency section provided below in paragraph 2.3.

- b. Subsidies given to vessels or operators fishing in areas beyond national jurisdiction, which are not aimed to fulfill a quota or a right established by a RFMO<sup>13</sup>.

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<sup>4</sup> For the purposes of this instrument, a subsidy shall be attributable to the Member granting it, regardless of the flag of the vessel involved.

<sup>5</sup> For the purpose of this instrument, the term "illegal, unreported and unregulated fishing" 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 (2001 IUU Fishing Plan of Action) of the UN Food and Agricultural Organization (FAO), adopted in Rome, 2001.

<sup>6</sup> The term "vessels" refers to any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.

<sup>7</sup> If an operator has more than one fishing vessel, this provision will only be applicable to that fishing vessel engaged in IUU activities.

<sup>8</sup> The determination made by a Member of a fishing vessel or operator having engaged on IUU fishing activities may include vessels of such flag State and/or vessels of a third country flag State when those fishing vessels have been found on IUU fishing activities within waters under the national jurisdiction of the Member making the determination.

<sup>9</sup> Lists of fishing vessels or operators issued by RFMOs which a Member is not Party to, may be recognized by such a Member.

<sup>10</sup> The term "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.

<sup>11</sup> The negative effect of such subsidies shall be determined based on the best scientific evidence available to that Member.

<sup>12</sup> For the purposes of this Article, a fish stock is overfished if the 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 to the Member within its jurisdiction or to the relevant RFMO. In the cases of straddling and highly migratory fish stocks, shared among Members, the evaluation related to the fish stocks in the fishery for which the subsidy is provided shall be made pursuant cooperation of the Members involved.

<sup>13</sup> Subsidies allowed under this provision do not include those subsidies granted to maintain vessels fishing in areas beyond national jurisdiction, without returning to the jurisdiction of the subsidizing Member within [x days] counted after the day of departure.

### 1.1.3 Related to Overcapacity<sup>14,15</sup>

- a. Subsidies that increase or allow to maintain the marine fishing capacity of a fishing vessel or a fishing fleet of vessels or support the acquisition of equipment that increases or maintains the ability of a fishing vessel or a fishing fleet of vessels to find fish;
- b. Subsidies that support the construction, importation or transference of fishing vessels or any other form of increasing a fishing fleet of vessels.

### 1.1.4 Small-Scale artisanal fishers

Except for disciplines for IUU fishing, in waters under national jurisdiction of a Member, disciplines shall not be construed or applied in a manner that prevents small-scale artisanal fishers<sup>16</sup> to access marine resources and markets.

## 2 TRANSPARENCY

2.1. In order to enable effective surveillance of subsidies elimination, Members shall notify as part of their regular notifications under Article 25.3 of the Agreement on Subsidies and Countervailing Measures the following information. In particular, but not limited to:

- a. fleet capacity in the fishery for which the subsidy is provided;
- b. operators and fishing vessels, for which the subsidy is provided;
- c. kind of subsidies provided and amounts granted;
- d. programme name;
- e. legal authority for the programme;
- f. catch data by species in the fishery for which the subsidy is provided;
- g. status of the fishery for which the subsidy is provided (for example, overexploited, depleted, fully exploited, recovering or underexploited);
- h. conservation and management measures in place for the relevant fish stock;
- i. total imports/export per species;
- j. fuel subsidies.

2.2. Members shall make this notification within one year after [the entry into force/adoption] of this instrument. In the case of developing and least-developed country Members the information requested in paragraph 2.1 shall be submitted to the Committee on Subsidies and Countervailing Measures (SCM Committee) within [the entry into force/adoption] of this instrument, 2 years and 4 years, respectively.

2.3. Within the six months after [the entry into force/adoption] of this instrument, Members that have not completed; or, need to update the information related to the status of the fish stocks in the fishery for which the subsidy is provided, shall inform the SCM Committee.

## 3 TECHNICAL COOPERATION

3.1. Members agree to implement an effective scheme of cooperation to help developing and least-developed country Members to acquire capacity building in the form of technical assistance in order to fulfill their commitments. This scheme could include bilateral and regional cooperation as well as technical assistance from relevant international organizations.

3.2. The provision of technical cooperation and capacity building under this instrument will be notified by providing Members and reviewed in the SCM Committee. The WTO shall cooperate with the FAO and UNCTAD in the provision of technical assistance under this Article.

<sup>14</sup> Disciplines related to overcapacity shall be restraint to areas beyond national jurisdiction.

<sup>15</sup> Subsidy programs of Members aimed to fulfill a quota or a right established by an RFMO shall not be covered by this provision.

<sup>16</sup> Small-scale artisanal fishers should be interpreted and applied in accordance with national legal systems of the Member concerned, taking into account the "Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication" of the FAO (the SSF Guidelines).

#### **4 REVIEW CLAUSE**

4.1. The SCM Committee should hold an annual special session to evaluate the progress in the implementation of the agreed disciplines and make recommendations for their future improvements.

Geneva, 29 May 2017

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