NEGOTIATING GROUP ON RULES – FISHERIES SUBSIDIES

DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING, AND RELATED ELEMENTS

* Documents issued in the RD series are not official WTO documents. They usually appear in their language of submission and will not be translated systematically into the working languages of the WTO. They are intended for use in WTO meeting rooms and are attributed an unofficial symbol for archiving purposes only.

Les documents de la série RD ne sont pas des documents officiels de l’OMC. Ils ne paraissent généralement que dans la langue dans laquelle ils ont été communiqués et ne seront pas systématiquement traduits dans les langues de travail de l’OMC. Ils sont destinés aux salles de réunion de l’OMC et une cote non officielle leur est attribuée à des fins d’archivage.

Los documentos de la serie RD no son documentos oficiales de la OMC. Por lo general se distribuyen en el idioma en que han sido presentados y no se traducen sistemáticamente a los idiomas de trabajo de la Organización. Se distribuyen para su uso en las salas de reunión de la OMC y se les asigna una signatura no oficial a efectos de archivo únicamente.
RD/TN/RL/174

DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING, AND RELATED ELEMENTS

Note: As Chair of the Negotiating Group on Rules (NGR), I had indicated the need to form a basis for the NGR’s text-based discussions in the fall with respect to disciplines on subsidies contributing to overcapacity and overfishing, and related elements. This document is intended to be used as the starting point for the text-based phase, on which Members can build on and adjust. As such, this document is without prejudice to any Member’s positions or views, whether or not reflected herein. Document RD/TN/RL/174/Add.1 provides detailed explanations of the provisions in this draft text.

ARTICLE A: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING

A.1 No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing. For the purpose of this paragraph, subsidies that contribute to overcapacity or overfishing include:

(a) subsidies to construction, acquisition, modernisation, renovation or upgrading of vessels;

(b) subsidies to the purchase of machines and equipment for vessels (including fishing gear and engine, fish-processing machinery, fish-finding technology, refrigerators, or machinery for sorting or cleaning fish);

(c) subsidies to the purchase/costs of fuel, ice, or bait;

(d) subsidies to costs of personnel, social charges, or insurance;

(e) income support of vessels or operators or the workers they employ;

(f) price support of fish caught;

(g) subsidies to at-sea support; and

(h) subsidies covering operating losses of vessels or fishing or fishing related activities.

A.1.1 A subsidy is not inconsistent with Article A.1 if a subsidizing Member not falling under Article A.1.2 demonstrates in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level. In addition to what is required under Article C.1, a subsidizing Member invoking this provision must provide the following:

(i) catch data by species or group of species in the fishery for which the subsidy is provided;

(ii) status of the fish stocks in the fishery for which the subsidy is provided (e.g., overfished, maximally sustainably fished, or underfished) and the

---

a For greater clarity, Article A.1 does not apply to subsidies to the extent they regard stocks that are overfished.

b For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.

c For multispecies fisheries, a Member instead may provide other relevant and available catch data.
reference points used, and whether such stocks are shared with any other Member or are managed by an RFMO/A; and

(iii) conservation and management measures in place for the relevant fish stock.

A.1.2 (a) The [X] largest providers of fisheries subsidies by annual aggregate value according to [...] shall be deemed to be providing subsidies to fishing or fishing related activities that contribute to overcapacity and overfishing.

(b) Notwithstanding subparagraph (a), a Member falling under that subparagraph shall not be deemed to be providing subsidies that contribute to overcapacity or overfishing if the Member demonstrates through a notification immediately after a subsidy is designed and in effect, and thereafter in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies, that measures are implemented to maintain stocks in the relevant fishery or fisheries at a biologically sustainable level. In addition to what is required under Article C.1, a subsidizing Member invoking this provision must provide the following:

(i) catch data by species or group of species in the fishery for which the subsidy is provided;

(ii) status of the fish stocks in the fishery for which the subsidy is provided (e.g., overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared with any other Member or are managed by an RFMO/A;

(iii) conservation and management measures in place for the relevant fish stock; and

(iv) fleet capacity in the fishery for which the subsidy is provided.

A.1.3 Any Member may, at any time, seek clarification on the fisheries subsidies granted or maintained by another Member. Where a Member has brought such a matter to the attention of the subsidizing Member or the Committee on Fisheries Subsidies referred to in Article 9 of the Agreement on Fisheries Subsidies, the subsidizing Member shall respond to the request as quickly as possible in writing and in a comprehensive manner.

A.2 (a) No Member shall grant or maintain subsidies contingent upon, or tied to, actual or anticipated fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction (whether solely or as one of several other conditions).

(b) [PLACEHOLDER: POSSIBLE FLEXIBILITY FOR SUBPARAGRAPH (a)]

ARTICLE B: SPECIAL AND DIFFERENTIAL TREATMENT

B.1 (a) A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its exclusive economic zone and in the area and for species under the competence of a relevant RFMO/A for a maximum of [7] years after the entry into force of these disciplines. A developing country Member intending to invoke this provision shall inform the Committee on Fisheries Subsidies in writing within one year of the date of entry into force of these disciplines.

\[\text{4 The term “shared stocks” refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.}\\\text{5 The mere fact that a subsidy is granted or maintained to vessels or operators that may be engaged in fishing or fishing related activities in areas beyond the subsidizing Member’s jurisdiction (e.g., fishing in a nearby Member’s exclusive economic zone (EEZ) pursuant to traditional or historical practices or arrangements, including relating to migratory stocks) shall not for that reason alone be considered to be contingent upon, or tied to, such fishing or fishing related activities.}\]
(b) Subsidies granted or maintained under subparagraph (a) shall be exempt from actions based on Article A.1 and Article 10 of the Agreement on Fisheries Subsidies for a period of two additional years after the end of the period referred to in subparagraph (a).

(c) A developing country Member may seek an extension of the period referred to in subparagraph (b) through the Committee on Fisheries Subsidies, which shall take into account the specific circumstances of that Member. Sympathetic consideration shall be given to developing country Members that demonstrate concrete progress toward implementing Article A.1.

B.2 A developing country Member may grant or maintain the subsidies referred to in Article A.1 for low income, resource-poor and livelihood fishing or fishing related activities, up to [12][24] nautical miles measured from the baselines, including archipelagic baselines.

B.3 A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities if its share of the annual global volume of marine capture production does not exceed [0.8] per cent as per the most recent published FAO data as circulated by the WTO Secretariat. A Member remains exempted until its share exceeds this threshold for three consecutive years. It shall be re-included in Article B.3 when its share of the global volume of marine capture production falls back below the threshold for three consecutive years.

B3 ALT A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities if its subsidies to fishing and fishing related activities do not exceed the annual aggregate value of [USD X] as per [...].

B.4 The prohibition under Article A.1 shall not apply to LDC Members. An LDC Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its EEZ and in the area and for species under the competence of a relevant RFMO/A for a maximum of [X] years after the entry into force of a decision of the UN General Assembly to exclude that Member from the “Least Developed Countries” category.

B.5 While applying Article B, a Member shall endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing.

B.6 [PLACEHOLDER: POSSIBLE CRITERION-BASED EXCLUSION FROM SDT]

**ARTICLE C: NOTIFICATION AND TRANSPARENCY**

C.1 The provisions of Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies shall apply to these disciplines, with the additions provided for in Articles A, B and C.

C.2 Each Member shall notify the Committee on Fisheries Subsidies in writing on an annual basis of:

(a) any vessels and operators for which the Member has information that reasonably indicates the use of forced labour, along with relevant information to the extent possible; and

(b) a list of any agreements in force, or existing arrangements, for obtaining access to fisheries of another coastal Member or non-Member, and such notification shall consist of:

(i) the titles of the agreements or arrangements;

(ii) a list of their parties; and

(iii) to the extent possible, the full text of the agreements or arrangements.

A Member may meet this obligation by providing an up-to-date electronic link to the Member’s or other appropriate official web page that sets out this information.
C.3 Notwithstanding Article 1 of the Agreement on Fisheries Subsidies, and to the extent possible, each Member shall notify the Committee on Fisheries Subsidies in writing on an annual basis of its fuel subsidies granted or maintained by a Member to fishing and fishing related activities that are not specific within the meaning of Article 2 of the SCM Agreement.

**ARTICLE D: OTHER OVERCAPACITY AND OVERFISHING PROVISIONS**

D.1 [PLACEHOLDER: POSSIBLE SUBSTANTIVE PROVISION ON NON-SPECIFIC FUEL SUBSIDIES]

D.2 [PLACEHOLDER FOR OTHER POSSIBLE PROVISIONS]