

# Update and State of Play on the WTO Fisheries Subsidies Rules Negotiations

The Road to MC11

# OUTLINE

- Introduction
- Background
- The Process Issues
- The Substantive Issues
- The Road Ahead
- Conclusion

# BACKGROUND

## **WTO Mandate**

### **Doha Mandate (2001)**

- “participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.”

### **Annex D of Hong Kong Ministerial Declarations (2005)**

- “strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing”.
- “Appropriate and effective of special and differential treatment (S&DT) for developing and least developed Members should be an integral part of the negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns”.

# BACKGROUND

- **UN Mandate**

- The UN SDGs were adopted in September 2015. Goal 14 is to "Conserve and sustainably use the oceans, seas and marine resources for sustainable development", with the specific Target in paragraph 6 on fisheries subsidies:
  - "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."

# BACKGROUND

- The 2007 chair's text
  - On 30 November 2007 the Chair of the NGRL submitted a draft consolidated text on Rules **TN/RL/W/213** and was presented to Members on 30 November 2007 which contained an Annex VIII on Fisheries Subsidies.
- The 2008/9 Chair's roadmap
- New proposals in 2010 and 2011
- DDA Stalemate – Dormancy 2012 – 2014
- Attempt and failure for an outcome at MC10 in Nairobi 2015

# CURRENT STATE OF PLAY

- Members have called for an outcome on fisheries subsidies rules in line with the DDA mandate and UN SDG 14.6 at the next ministerial conference.
- Seven textual proposals have now been submitted:
  - The European Union (EU) – TN/RL/GEN/181/Rev.1;
  - New Zealand, Iceland and Pakistan – TN/RL/GEN/186; Norway – TN/RL/GEN/191;
  - Indonesia – TN/RL/GEN/189/Rev.1;
  - Argentina, Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay – TN/RL/GEN/187/Rev.2;
  - The Least Developed Countries (LDCs) – TN/RL/GEN/193
  - African Caribbean and Pacific (ACP) Group of states – TN/RL/GEN/192

# CURRENT STATE OF PLAY

- **Compilation Matrix Of Textual Proposals Received To Date**
  - Not a chair's text;
  - A compilation, topic by topic, of the seven textual proposals now on the table;
  - Nothing has been added to or subtracted from any of the proposals and no judgements are expressed or implied;
  - Meant to be a purely technical document and is without prejudice to and does not replace any of the proposals, all of which remain before the group.

# PROCESS ISSUES

- Validation and acceptance of the Matrix -
  - Proponents - July
  - Membership – October 11
- Full reading of the matrix – October 11, 12 and 26 – 29;
- Towards a single consolidated negotiating text;
  - Member driven process
  - Onus on proponents to advance issues and build consensus
- Proponents discussions to build convergence



# SCOPE

- **Scope**

- Near consensus on wild marine capture; does not cover
  - Inland fishing;
  - Aquaculture
- ACP excludes also
  - Recreational fishing
- Indonesia includes fresh water capture fishing
- Excluded subsidies
  - Subsidies considered to be "good" or "beneficial"
    - subsidies for natural disaster relief, crew and vessel safety, sustainable fisheries, fisheries management and environmental protection and climate change resilience.

# DEFINITIONS

- Broadly supported principle that the WTO Agreement should not unnecessarily create new definitions but instead rely on existing definitions drawn or referenced from the competent international/multilateral, regional and national authorities.
- Emerging commonality on the definitions for fishing/fishing activity, fishing vessel, fishing operator, and IUU fishing. Reliance has been placed on definitions within FAO guidelines and instruments.
- Divergence on the application of national approaches to the implementation of international definitions. The ACP gives recognition to the application in national laws and regulations.

# DEFINITIONS

- Whether or not to define the different scales of fishing activity
  - Subsistence
  - Artisanal
  - Small scale
  - Semi industrial
  - Large scale industrial
- The challenge of arriving at a consensus on definition criteria;

# PROHIBITIONS

- Subsidies to Illegal, unreported unregulated (IUU) fishing
  - Members mostly seem to agree that the basis of determining or identifying IUU fishing should include the listings of fishing vessels/operators caught engaged in IUU activity and promulgated by RFMOs and the incidents of and/or the national lists of IUU activity in taking place the EEZs of coastal states.
  - Several Members are concerned about the application of or reliance on lists from RFMOs of which they themselves are not Members. These Members are therefore seeking assurances of due process, transparency and appeal procedures.

# SUBSIDIES TO OVERFISHED STOCKS

- Prohibiting subsidies for fishing of stocks in an overfished condition
- As recognised by national authorities and RFMOs
- Whether or not to require the use of best scientific evidence available or available to members
- Whether or not to apply a precautionary principle – stocks to be considered overfished if:
  - Unassessed stocks
  - Lack of sufficient data

# SUBSIDIES CONTRIBUTING TO OVERFISHING AND OVERCAPACITY

- Different approaches and philosophies
  - Listing approach
    - Capacity enhancing subsidies; operating cost subsidies; capital cost subsidies
  - Effects based or circumstance based approach
    - “negatively affecting”
    - Unassessed stocks
    - Fishing in “foreign” managed waters
  - The role of fisheries management
    - Whether and to what extent to incorporate and discipline fisheries management
    - Conditional link to special and differential treatment

# SPECIAL AND DIFFERENTIAL TREATMENT

- WTO and UN Mandate on SDT
- The need for flexibility and policy space to develop domestic fishing sectors
- Protection of subsistence, artisanal and small scale fishing
- Different approaches
  - ACP and LDCs proposed excluding the EEZ
  - EU, Indonesia and Latin American identify subsistence, artisanal and small scale fishing for flexibility
- Concern about SDT undermining the goals of sustainable fishing

# TRANSPARENCY

- There is consensus that new rules on fisheries subsidies disciplines will have some new transparency and notification requirements.
- Members differ on the breadth and depth of information that should be required.
- The ACP is particularly concerned about the capacity constraints of developing countries and its Members specifically and the burden of new transparency disciplines. The ACP is also concerned about the provision of confidential information, including confidential business information.



# TRANSITIONAL PROVISIONS AND STANDSTILL

- References to 2020 in UN SDG 14.6
- General delay of application of agreement after entry into force
- Additional transitional period for developing countries and more for LDCs
- Some form of standstill provision based on SDG 14.6

# THE ROAD AHEAD

- 12 weeks remaining... very limited time
- Need for determination and intensity to resolve differences and build convergence;
- Moving from the matrix to a consolidated negotiating text.
- The wider negotiating context
  - Lack of progress on other negotiating areas
- Marrakech Ministerial meeting

# CONCLUSION

- The ACP Group should continue its constructive engagement in the discussions to advance and secure its interests and concerns in any outcome on fisheries subsidies rules.
- The ACP should maintain its position that there must be a negotiated outcome on fisheries subsidies rules at MC11 alongside any and other negotiated outcome and if possible as a standalone.