



**Fisheries
Subsidies**
Buenos Aires &
beyond

bryce williams
rusudan gergauli
hamid gholizadeh nojehdeh

a handbook

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This handbook was created within a [TradeLab International Economic Law Clinic](#) project at the Graduate Institute of International and Development Studies in 2017.

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Introduction

The Buenos Aires Ministerial Decision of 13 December 2017 on Fisheries Subsidies (the **BA Ministerial Decision**)¹ marks more than 20 years since the issue of subsidies to fisheries was raised at the World Trade Organization (**WTO**), originally under the auspices of Committee on Trade and Environment (**CTE**),² and later the Negotiating Group on Rules (**NGR**), and more than 25 years since the UN Food and Agriculture Organization (**FAO**) drew attention to the “*potential of subsidies to stimulate overcapacity and over-fishing*”.³

The checkered and protracted history of the negotiations, despite the sustained engagement of many WTO Members and the pressing nature of the issue at hand (a “*perplexing*” situation in the words of one proponent),⁴ reflects the challenges of effective, multilateral negotiations at the WTO. Nevertheless, the BA Ministerial Decision promises that progress can be made notwithstanding these challenges.

As the BA Ministerial Decision heralds, further work is still required, and the *constructive* engagement of Members will be critical to achieving the goal of “*an agreement on comprehensive and effective disciplines*” on fisheries subsidies in the inter-Ministerial Conference interval.⁵

BA Ministerial Decision –

1. Building on the **progress** made since the 10th Ministerial Conference as **reflected in documents** **TN/RL/W/274/Rev.2, RD/TN/RL/29/Rev.3**, Members agree to continue to **engage constructively in the fisheries subsidies negotiations**, with a view to adopting, **by the Ministerial Conference in 2019, an agreement on comprehensive and effective disciplines** that prohibit certain forms of fisheries subsidies that contribute to **overcapacity and overfishing**, and eliminate subsidies that contribute to **IUU-fishing** recognizing that appropriate and effective **special and differential treatment** for developing country Members and least developed country Members should be an integral part of these negotiations.

2. Members **re-commit** to implementation of **existing notification obligations** under Article 25.3 of the Agreement on Subsidies and Countervailing Measures thus strengthening transparency with respect to fisheries subsidies.

(emphasis added)

About this handbook



The BA Ministerial Decision obliges Members to continue to constructively engage in the fisheries subsidies negotiations in order to come to an agreement by the next Ministerial Conference in 2019, in line with the 2020 deadline set by target 14.6 of the 2030 Sustainable Development Agenda (**SDG Target 14.6**).

From now to the next Ministerial Conference, it is inevitable that new Members will join the negotiations, new proposals will be submitted to the NGR, and new diplomats will succeed their (understandably weary) colleagues. This handbook aims to provide a reference point for new Members and new negotiators who join the fisheries subsidies negotiations. It introduces the background and history of the negotiations, analyses its most challenging elements, and explains the development of those elements in the negotiations.

This handbook is structured in three main parts. The first part provides a summary of the development of the negotiations on the fisheries subsidies within the WTO. The second part discusses the key elements in the negotiations, highlighting the most challenging issues. The final part briefly illustrates the way forward for the negotiations in order to achieve the deadlines set by the BA Ministerial Decision and SDG Target 14.6.

SDG Target 14.6 –

by 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU 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 WTO fisheries subsidies negotiation.

Development of the Negotiations

The following section details the different phases of the WTO fisheries subsidies negotiations, including the substantive issues considered in each phase – from Doha in 2001 to Buenos Aires in 2017.

Doha ↔ Hong Kong

The Ministerial Declaration at Doha in November 2001 (**Doha Declaration**)⁶ set the mandate for Members to *clarify* and *improve* disciplines applicable to fisheries subsidies. The Doha Declaration recognized the importance of the fisheries sector to developing countries, as well as their special needs in any negotiated regime. The Doha Declaration also recognized the interaction between the role of the WTO and other intergovernmental fora and agreements in addressing global fisheries challenges (for example, the FAO).⁷

Necessity of fisheries-specific disciplines; categorization of subsidies

Early discussions in the forum established by the Doha Declaration (the NGR) centered around the *necessity* of special disciplines for fisheries within the context of the Agreement on Subsidies and

Countervailing Measures (**SCM Agreement**). Members had to consider whether the issues surrounding fisheries subsidies were “*exceptional and distinctive*”,⁸ in part because of their production-related (not just trade-related) distortive effects, or alternatively, whether fragmentation should be resisted, and deficiencies in the SCM Agreement be addressed globally, across all sectors?⁹

With that question left unresolved, Members then considered the potential categorization of subsidies within a future discipline, along the lines of the existing SCM Agreement ‘traffic light’ categories (prohibited, actionable and non-actionable subsidies),¹⁰ and alternative categories.¹¹

Structure of disciplines; specific sub-issues

By late 2004, the discussion had shifted to the structure of the new disciplines, and new dividing lines emerged between advocates of a ‘top-down’ approach (characterized by a broad prohibition and defined exceptions) and a ‘bottom-up’ approach (with a positive list of defined prohibitions).¹² Whilst the necessity of special disciplines had been accepted, the structural division proved to be intractable, with Members again shifting

the focus to individual, conceptual issues like fisheries management,¹³ capacity-reducing subsidies,¹⁴ IUU fishing,¹⁵ aquaculture¹⁶ and fisheries infrastructure.¹⁷

Textual proposals

A call for proposed legal drafting, and 'text-based' discussions¹⁸ came in the lead-up to the Hong Kong Ministerial Conference and Declaration in December 2005 (**HK Declaration**).¹⁹ The HK Declaration recognized the broad agreement in the NGR for strengthened disciplines on fisheries subsidies, as well as the need for transparency and enforceability in any negotiated outcome. Special treatment for developing Members was reiterated in the HK Declaration.

Hong Kong ↔ Nairobi

Chair's text and aftermath

A flurry of proponent texts circulated in the wake of the HK Declaration, but little convergence was achieved. By July 2007, the Chair of the NGR had grown "*impatien[t] for the time when we could move to the next stage of our work... conducted on the basis of Chair texts*".²⁰

In November 2007, the time was adjudged ripe and a Chair's text was circulated amongst the NGR,²¹ to serve "*as a basis for intensive, technical and focussed discussion*".²² The text took a compromise approach in some areas, but in others adopted new approaches to the disciplines. It prompted a vociferous reaction from

Members, reflecting, in the Chair's words, "*sharply conflicting views*".²³

The challenge of developing new disciplines in an area in which Members "[had] no pre-existing GATT/WTO agreements to which [they] could revert" and in which "*the differences among delegations go to the very concepts and structure of the rules*" saw a return to the drawing board,²⁴ with a Chair-circulated 'roadmap' in December 2008 to guide further discussions.²⁵ Despite a "*long and painful*" year discussing each of the elements in the roadmap, the Chair concluded that "*no narrowing of positions emerged*".²⁶

By March 2011, "*in spite of the wealth of new proposals, little tangible progress on the core issues [had] been made*". Nevertheless, the Chair envisaged "*the logic behind the negotiating mandate as essentially optimistic*".²⁷

Following a three year-long hiatus in the NGR, the Chair's view was more sober – in March 2014, following the Bali Ministerial Conference, proposing "*serious horizontal reflection as to the overall scope and level of ambition of post-Bali activity... [as] the basis for a threshold determination of whether any or all of the Rules issues will be included in the next phase of our work*".²⁸

Recalibration and renewal

A submission from six members more than a year later, seeking a 'recalibrated outcome' in the lead up to the 2015 Nairobi Ministerial Conference, and based on key, defined elements, reignited fisheries subsidies discussions in the NGR.²⁹ Even

though several substantive proposals for a Ministerial Decision were on the table (including a number with a specific focus on transparency),³⁰ consensus was not able to be reached and a more limited reference in the Nairobi Ministerial Declaration to “*advance negotiations*” was adopted.³¹ At the same time, a group of 28 Members circulated a statement expressing their shared understanding to “*reinvigorate work in the WTO*” on fisheries subsidies, including in respect of overfished stocks, IUU fishing, overfishing and overcapacity (the **28 Member Statement**).³²

Nairobi Buenos Aires

Despite the setback at Nairobi, the call in SDG Target 14.6, to be achieved by 2020, and the 28 Member Statement, kept strengthened disciplines on fisheries subsidies at the top of the NGR agenda.

A group of six proponents, recognizing that some 15 years had elapsed since the Doha Declaration, posed questions to Members to see how “*Members’ policies and interests*” had changed in that period.³³

Seven groups of Members responded to the call, including with some unconventional suggestions to help break from the deadlocks of earlier negotiating periods (**Original Seven Proposals**).³⁴ The Proposals covered a core set of fisheries subsidies disciplines, although with different emphases, textual and conceptual approaches.

Proposal matrices; consolidation efforts

By June 2017, under the shadow of the eleventh Ministerial Conference, these proposals had been worked into a ‘horizontal matrix’ – a table illustrating areas of convergence and divergence across the common set of core issues.³⁵

To live on as a working negotiating document, each of the proponents took on a textual consolidation role – converting the ‘horizontal matrix’ into a ‘vertical’ one. With this document in hand, negotiations progressed, line-by-line, seeking textual and substantive convergence.

At the end of that process, more work was clearly needed, including to incorporate new proposals from China,³⁶ India, the Philippines,³⁷ and a cross-cutting proposal from the United States.³⁸ Once again, concepts were pulled out (of the vertical text, RD/TN/ RL/29/Rev.3 (**Negotiated Non-Paper**)), developed by proponents into working documents, and interrogated by the NGR, before being placed in a new vertical consolidation – TN/RL/W/274/Rev.2 (**Working Consolidation**).

By the time of the BA Ministerial Decision, a number of elements, including the scope of the agreement, definitions and institutional arrangements, had not undergone this process. As such, they do not yet appear in the Working Consolidation, and the latest working version is that contained in the Negotiated Non-Paper.

The BA Ministerial Decision:

- ☆ recognizes, records and preserves the **progress** reflected in the Working Consolidation (and its predecessor Negotiated Non-Paper);
- ☆ obliges Members to **engage constructively** in the negotiations;
- ☆ sets a **deadline** of the Ministerial Conference in 2019 to finalize negotiations;
- ☆ implies the final disciplines will take the **form** of an agreement;
- ☆ refers to two of the three **core disciplines** under negotiation (overcapacity/overfishing, and IUU fishing);
- ☆ recognizes the integral nature of **special and differential treatment** for developing and least developed Members; and
- ☆ re-commits Members to existing **transparency** obligations.

However, despite the call in the draft Decision put forward by the NGR (**Draft BA Ministerial Decision**),³⁹ the BA Ministerial Decision does not put in place any new obligations on Members related to IUU fishing, overfished stocks, or overcapacity/overfishing (interim or otherwise). It is only a first step, though in the right direction, to adopting disciplines in these areas.

The following page summarizes the development of the negotiations in a visual form.

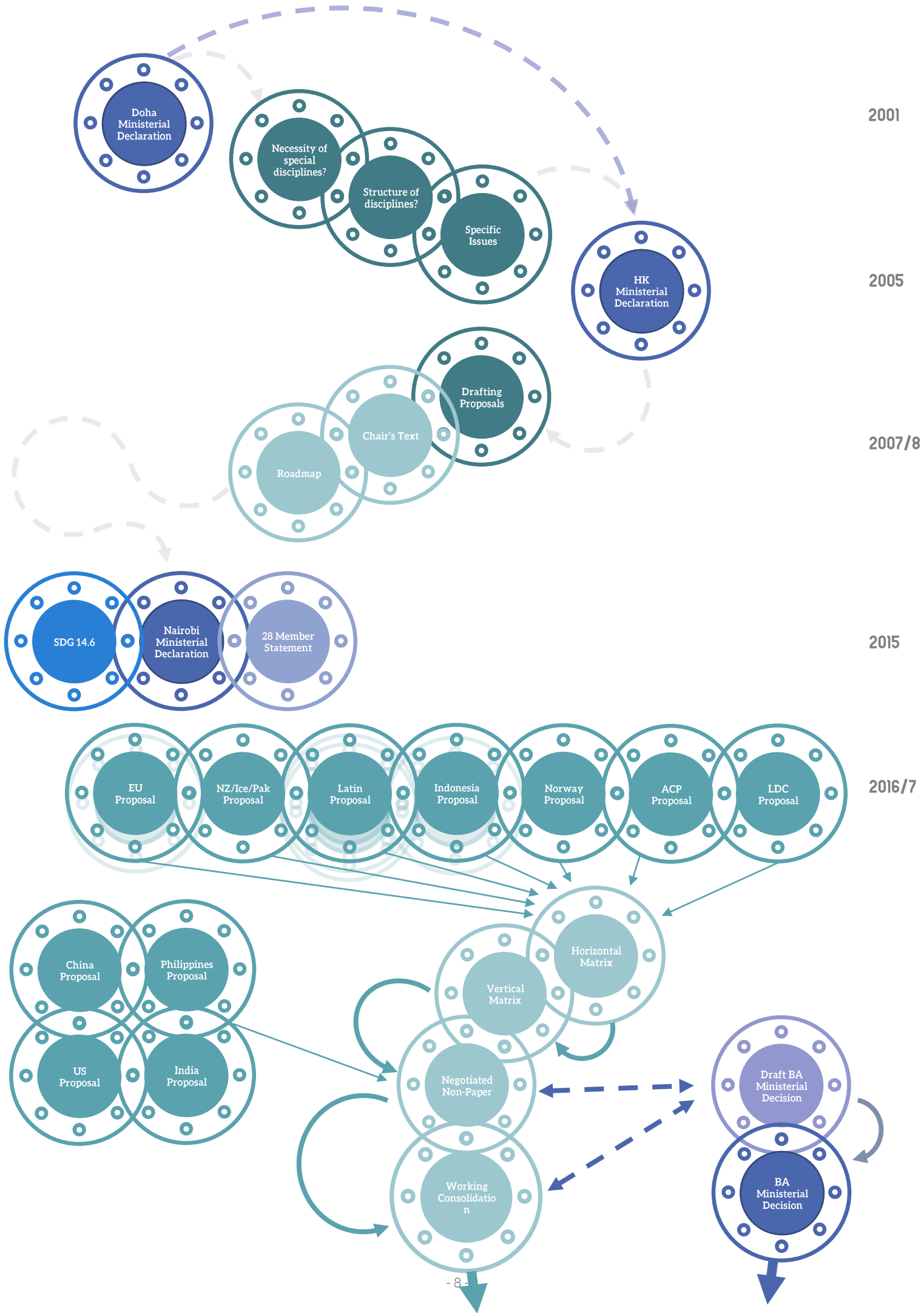
Key

- ⊗ **Category of proposals**
- ⊗ **Individual proposal**
- ⊗ **Synthesis of proposals**

- ⊗ **Ministerial Decision / Declaration**
- ⊗ **(related document)**

- ⊗ **External (non-WTO)**





Key Elements

The following section tracks the development of key elements of the fisheries subsidies negotiations, with an emphasis on the progress made since the Nairobi Ministerial Declaration (and in particular, following the distribution of the 'horizontal matrix'), and areas for further development until the twelfth Ministerial Conference.

As noted in the section above, the latest 'version' of each of these elements may appear in the Working Consolidation (prohibited subsidies, transparency, special and differential treatment) or its predecessor, the Negotiated Non-Paper (preamble, definitions, scope, transitional period, and institutional arrangements). The commentary below reflects the latest 'version' available as at the Buenos Aires Ministerial Conference.



Scope of Application

The SCM Agreement serves as the legal and conceptual framework for the negotiations on fisheries subsidies, consistent with the mandate from the Doha Declaration that “*the basic concepts, principles and effectiveness of [the SCM Agreement] and [its] instruments and objectives*”, be preserved. Namely, any fisheries subsidy including elements of financial contribution from the Government (or private company directed by the government), and benefit for the recipient, will fall within the scope of the final agreement.

From this broad framework, proponents of the Original Seven Proposals advocated two general types of limitations on the scope of the disciplines. Negotiations on these scope limitations are still premature - having not reached the stage of re-incorporation back into the Working Consolidation, nor inclusion in the BA Ministerial Decision.

The first limitation focuses on the exclusion of matters related to disputed waters and zones, including any implications of the disciplines on

territoriality or delimitation. This concern was reflected in paragraph 7 of the Draft BA Ministerial Decision, but not the final Decision. A more recent proposal from China extends the scope of the limitation to dispute settlement procedures under the DSU, including provision for the immediate termination of disputes relating to territoriality.

The second limitation concerns the exclusion of broad areas from the scope of the disciplines, such as inland fisheries and aquaculture, as well as the exclusion of more specific issues - the installation of equipment for safety or for control and enforcement purposes, recreational fishing, safety, research and development, compensation for natural disasters, and fuel-detaxation schemes.

Prohibited Subsidies

Illegal, Unreported and Unregulated (IUU) fishing

KEY CHOICES:

Who can make a IUU fishing list determination?

Is a subsidizing Member *directly* bound by a listing determination, or are there *additional* thresholds / requirements before a subsidizing Member is bound?

IUU fishing is a broad term that captures a wide variety of fishing activity, most of which is illicit.⁴⁰ IUU fishing has been addressed in the context of the fisheries subsidies negotiations since 2002, primarily in submissions by Japan, Republic of Korea and other Members. Since these early submissions, the importance of a prohibition on subsidies contributing to IUU fishing has been recognized by many other Members.

In each of the Original Seven Proposals, IUU fishing was a central concern. China's subsequent proposal also focuses on subsidy disciplines related to IUU fishing.⁴¹

The two most important issues in these proposals relate to the definition of IUU fishing and the process for, and impact of, listings on an IUU fishing list.

Definition of IUU fishing - Two approaches were proposed for the definition of IUU fishing in the Original Seven Proposals. The first approach involved referring to the definition in the International Plan of Action (**IPOA-IUU**) of the FAO. Most proponents followed this approach. The second approach was to provide a new definition in the form of an annex to the final agreement (ACP proposal), with the discipline applying as defined in the annex and "*as implemented under national laws and regulations*".⁴² The annexed definition nevertheless closely tracks the FAO definition.

The scope of alternatives proposed in the Working Consolidation and the breadth of the Draft BA Ministerial Decision reflect a continuing divergence in views between Members.

IUU fishing list determinations - Each of the Original Seven Proposals had different approaches to the range of relevant authorities for making IUU list determinations, and whether listing determinations would take effect directly, be subject to objective requirements (for example, due process) or require recognition by the subsidizing Member, to take effect.

In respect of the relevant authorities, an inclusive list has been adopted, incorporating the lists of the subsidizing Member, flag Member, coastal state,

Regional Fishery Management Organizations or Arrangements (RFMOs) and the FAO.⁴³ A key issue was whether to directly recognize IUU lists established by an RFMO, ‘especially when the determination was made by an RFMO that the subsidizing Member was not a party to.’ Although Members still need further negotiations for the details and process, it seems that there is some level of convergence in the Working Consolidation for recognizing determinations by RFMOs.

Despite the range of alternatives for a moratorium on subsidies contributing to IUU fishing proposed in the Draft BA Ministerial Decision, the final BA Ministerial Decision does not impose any new obligations on Members related to IUU fishing.

Overfished and Unassessed fish stocks

KEY CHOICES:

What is the standard for assessing fish stocks?

How are unassessed fish stocks to be treated?

This discipline relates to subsidies affecting specific, vulnerable fish stocks – overfished stocks are at such a low level that fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield (the largest catch which is sustainable indefinitely). The FAO estimates that approximately 90% of global fisheries are overfished or

fully fished.⁴⁴ Thus the prohibition of subsidies which negatively affect overfished fish stocks was an important issue in the negotiations. Five of the Original Seven Proposals addressed this issue.⁴⁵ The Proposals take different approaches to the elements of the prohibition, including the definition of an overfished fish stock, the determination of negative effects of the subsidies on fish, the assessment of fish stocks, and excluded subsidies (the subsidies that do not negatively affect targeted fish stocks that are in an overfished condition).

Assessment of fish stocks - The assessment of fish stocks has presented a particular challenge in the negotiations. Some proponents proposed that the assessment should be based on “*best scientific evidence*” available to a Member in whose national jurisdiction the fishing is taking place, while others⁴⁶ noted that Members already have obligations to assess stocks and ensure they are at or above sustainable levels.⁴⁷ The prohibition of subsidies targeted at fish stocks which are not assessed would support these existing commitments and “*would not require any giving up of policy space.*”⁴⁸ Unassessed fish stocks have also been proposed to be treated as if they are in an overfished condition and subject to the prohibition.

Determining Authority - It appears that Members have reached a degree of consensus on the authority to determine the status of fish stocks. Almost all of the Proposals which addressed this issue recognized determinations of the status of

fish stocks by the Member ‘in whose national jurisdiction the fishing has taken place.’ The recognition of determinations made by a relevant RFMO (in the context of fishing activities outside of any Member’s jurisdiction) is still subject to further negotiation in the NGR.

Geographic aspect - The geographical aspect is another issue that needs further discussion. The question is whether only subsidies for fishing activities ‘outside of the national jurisdiction of the subsidizing Member’ (including fishing in another Member’s jurisdiction, or on the high seas) should be prohibited, or if the prohibition ‘should also extend to subsidies for fishing activities in waters under the national jurisdiction of the subsidizing Member.’

Members had not reached agreement on the terms of a discipline on overfished stocks by the time of the Draft BA Ministerial Decision. The delegations of Canada, the European Union, Iceland, New Zealand and Norway proposed a simple moratorium that, “*until a negotiated Agreement is adopted, no Member shall grant or maintain subsidies to fishing that negatively affects targeted fish stocks in an overfished condition,*”⁴⁹ be included in the BA Ministerial Decision. Members in the BA Ministerial Decision agreed to “*continue to engage constructively in the fisheries subsidies negotiations to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing*”, but as with IUU fishing, did not impose any new obligations on Members in the interim.

Overcapacity, Capacity Enhancing and Overfishing

KEY CHOICES:

How broadly should this prohibition be defined?

What potentially capacity-enhancing subsidies should be specifically excluded from the prohibition (safety, etc)?

Overcapacity is another challenging issue that has been addressed directly in five of the Original Seven Proposals. A basic definition of fishing capacity describes it as the ability of a fleet to catch fish, but there still is no generally agreed upon method for how capacity should be measured.⁵⁰ Thus delegates in the NGR have adopted a broad definition, prohibiting subsidies which increase fishing vessels’ capacity and ability to find and catch fish.

Overfishing occurs when more fish are caught than the population can replace through natural reproduction. It is linked with, but distinct from the discipline in respect of overfished stocks – subsidies which contribute to overcapacity and overfishing can endanger overfished stocks, but can also cause moderately or fully exploited stocks to become overfished.

Prohibited Subsidies - Different forms of subsidies were considered to be prohibited by the different Proposals based on their impact on vessels’ ability and capacity to find fish (for instance, subsidies for construction, renewal or upgrading fishing vessels, or subsidies for operating costs which contribute to overfishing).

Nevertheless, there is still divergence and a need for further negotiations to reach agreement on all of the proposed prohibitions.

Geographic Aspect - There is some convergence in the geographic aspect of this prohibition - in that it should be limited to fishing in areas beyond the national jurisdiction of the subsidizing Member (i.e. the prohibition does not apply to subsidies for fishing solely within a Member's EEZ). Another issue that remains unsolved is whether the prohibition extends to subsidies for fishing beyond the national jurisdiction of the subsidizing Member, but which is "*aimed to fulfil quota or a right established by an RFMO*" (and whether such an exception applies to developing or all Members).

Exclusions - Some Proposals expressly excluded some types of subsidies from the scope of the prohibition. For instance, the installation of equipment for safety, or for control and enforcement purposes, or equipment for the purpose of reducing environmentally harmful emissions.

The Working Consolidation includes a heavily bracketed form of the discipline, reflecting the range of Members' views on the issues above.

Paragraph 3 of the Draft BA Ministerial Decision⁵¹ incorporated a moratorium on new, extended or enhanced subsidies contributing to overfishing and overcapacity, subject to a *best efforts* qualification, and special and differential treatment. However, Members were not

able to reach agreement on this provision in the final Ministerial Decision.

Special and Differential Treatment

KEY CHOICES:

Which prohibitions and other obligations should be subject to special and differential treatment?

What form should that special and differential treatment take?

Consistent with the developmental focus of the Doha Round, special and differential (**S&D**) treatment has been central to the negotiations on fisheries subsidies disciplines, from both a procedural and substantive perspective.⁵²

In 2002, a two-step approach was put on the negotiating table, where negotiation would first concentrate on general rules, and S&D treatment would later be elaborated on the basis of the already adopted rule. Other states advocated simultaneous elaboration of S&D.

From a substantive perspective, Members debated whether S&D treatment should be permanent, recognizing the “*permanent disadvantage of the developing members*”,⁵³ or transitional, concentrated on the

achievement of developing countries’ legitimate development goals and consequently avoiding permanent exceptions from the disciplines.

Least Developed Countries (**LDCs**) from an early stage of negotiations submitted that “*equal rules shall not be applied to unequal players*”.⁵⁴ Negotiations were continued with broader discussion over the notion of “*balance*”, and the best means of facilitating LDCs’ transition.

Prior to the Original Seven Proposals, the fields to be covered by S&D treatment were much wider, and included, amongst other things:

- ☆ *Access fees and Development Assistance*
- ☆ *Fiscal Incentives to Domestication and Fisheries Development*
- ☆ *Assistance to Artisanal or Small-scale Fisheries*
- ☆ *Subsidies which increase fishing capacity or effort of Members (that are part of a RFMO)*
- ☆ *Fuel, bait or ice supply for fishing activities*
- ☆ *Payments received from other developing countries’ governments for access to EEZ fisheries resources*
- ☆ *Assistance to disadvantaged regions under article 8.2(b) of the SCM Agreement*
- ☆ *Fisheries in the Member’s own Exclusive Economic Zone*
- ☆ *Fishery management plans and fishing without adverse effects on resources governed by such plan*

Over the course of the negotiations, it became clear that the main goal of S&D treatment was development and poverty elimination, meaning that the mere fixation of a long transition period would not be sufficient to accommodate the needs of LDCs. For this purpose, Argentina set forth four criteria for S&D treatment in any negotiated outcome - it would need to be responsible, selective, limited and transparent.

Exclusions and transition periods - In light of the above approach, the initial range of proposals narrowed and by 2017 proponents had focused on the exclusion of the following activities from the general prohibitions:

- ☆ *Fishing activities related exclusively to artisanal and small-scale fisheries or the subsistence and livelihood of the fishermen and their families*
- ☆ *Fishing activities, which exclusively exploit fish stocks within the exclusive economic zone (EEZ) of the Member granting the subsidy*
- ☆ *Fishing activities (outside of a Member's EEZ, or in all waters), which exclusively exploit quotas or any other rights, established by a RFMO/A.*

Members appear to have come to a consensus, in the lead up to Buenos Aires, that only prohibitions in respect of IUU and overfished stocks apply to LDCs. As for the remaining disciplines included in the Working Consolidation, prohibitions related to subsidies contributing to overcapacity and overfishing shall not

apply to LDCs. The approach was adopted to recognize LDCs' inability to implement all the agreed prohibitions simultaneously.

For the overfished, overfishing and overcapacity disciplines, Members have come to a consensus on the need for a transitional period for LDCs, though the length of this period remains to be agreed (see **Transitional Period**).

Technical assistance - In addition to the general scope of exclusions, special attention was paid to the obligation of developed states to provide LDCs with technical assistance in respect of reporting mechanisms and regulations, stock assessments, monitoring, control and surveillance of fish stocks, research and development, and overcoming other institutional and financial difficulties.

The negotiations have converged on three alternatives for the provision of technical assistance - the first providing a more detailed list, the second suggesting broad and general content, and the third focusing on support and assistance for capacity building. Considering the difficulties during the negotiations, the BA Ministerial Decision is limited to mere "recognition" of importance of "appropriate" and "effective" S&D treatment for developing and least developed country members.⁵⁵

Standstill

SDG Target 14.6 contains a so-called standstill commitment for Members “to refrain from introducing new subsidies that contribute to overcapacity and over fishing or from extending or enhancing existing ones”,⁵⁶ though of the Original Seven Proposals, only the proposal set forth by Iceland, New Zealand and Pakistan includes such a provision. The provision targets the introduction of new or enhanced subsidies which have adverse effects, but which are beyond the scope of a specific prohibition.

The concept is reflected in article 4 of the Working Consolidation, but has not been incorporated into the Draft BA Ministerial Decision nor the final Decision. Paragraph 3 of the Draft BA Ministerial Decision closely mirrored the standstill in SDG Target 14.6, though it is subject to a ‘best efforts’ qualification. However, as noted above, the BA Ministerial Decision does not incorporate this standstill, or any moratoria on fisheries subsidies pending a final agreement.

Transitional Period

Negotiations shortly after the Doha Ministerial Conference emphasized the necessity of a “short transitional period” for implementation of the outcome of the

negotiations - Members recognized that it would be “unrealistic to expect rigorous new disciplines to take effect immediately”.⁵⁷ Therefore, it was obvious that while Members considered exceptions from the general rules, they also needed to discuss transitional provisions.

In previous proposals, Members have suggested a variety of periods - in its 2005 submission, Brazil set forth a 3-year period to “phase out and eliminate [prohibited] subsidies” and 5-year period for developing countries. In addition, Brazil advocated a 10-year transitional period for LDCs during which prohibited subsidies would be treated as actionable subsidies under the SCM Agreement.

Ultimately, the Working Consolidation provides for two separate transitional periods - a global transitional period for all prohibitions (the length of which is potentially subject to development status), and an additional transitional period for implementing the discipline on overcapacity subsidies, conditional on the subsidy not targeting overfished stocks. Given that the BA Ministerial Decision contains no reference to this issue, it remains up to the NGR to pursue constructive negotiations in order to find a workable compromise on the implementation of transitional period. Nevertheless, the 2020 deadline in SDG Target 14.6, combined with the deadline for reaching agreement on disciplines by the Ministerial Conference in 2019 does not give Members much room for a lengthy transitional period.

Transparency and Notifications

The importance of improved transparency to new disciplines on fisheries subsidies was recognized early in the process (reflected in a submission from eight Members in 2002)⁵⁸ – and has even been described as a “*conditio sine qua non*” (an

essential element) by another proponent.⁵⁹

Members recognized that the information in notifications required by Article 25.3 of the SCM Agreement was not sufficient in the context of effective fisheries subsidies disciplines, and needed to be complemented by “*fishery-specific information*”.⁶⁰ To that end, paragraph 2 of the BA Ministerial Decision “re-commits” Members to the implementation of existing notification

obligations, but stops short of the additional transparency measures proposed in the Draft BA Ministerial Decision.

Each of the Original Seven Proposals adopted a broadly similar approach to transparency (see Enumerated List; Timing, below), although with some differences in respect of key elements (in particular, see Scope, below). These differences largely remain unresolved in the Working Consolidation.

Alternative approaches to transparency, developed before the Original Seven Proposals, have not been revived in the BA Ministerial Decision or Working Consolidation (see Thresholds; Institutional and other aspects, below).

As Brazil and other Members have noted,⁶¹ improved transparency also has importance for the *process* of negotiating the substantive disciplines – as Members are better able to assess how disciplines will (or will not) affect existing programs and can modify their scope accordingly.

Enumerated List – an enumerated list of additional “*fishery-specific*” information about subsidies programs has formed a common thread through transparency proposals since Brazilian submissions in 2005/2006,⁶² and remains at the core of Article 6 in the Working Consolidation.

The core list of individual elements has been refined since Nairobi, with a generally inclusive approach adopted. However, some previously proposed elements, including notification of

Existing notification requirements under Article 25.3 (SCM)

- (i) **form** of a subsidy (i.e. grant, loan, tax concession, etc.);
- (ii) **subsidy per unit** or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);
- (iii) **policy objective** and/or purpose of a subsidy;
- (iv) **duration** of a subsidy and/or any other time-limits attached to it; and
- (v) **statistical data** permitting an assessment of the trade effects of a subsidy.

measures taken by Members to ensure no subsidies have contributed to IUU fishing,⁶³ the existence of inter-Member fisheries rights agreements,⁶⁴ and Members' reliance on Special and Differential Treatment flexibilities,⁶⁵ do not form part of the current Working Consolidation.

Focus must now shift to what information is mandatory in all instances, and what information is to be notified subject to a best endeavors obligation, the availability of the information, and/or the practicability of notification.

In addition, Article 6 of the Working Consolidation sees the inclusion of additional recommended notifications for subsidies in areas which may not be directly captured by the disciplines, but which may nevertheless have a significant effect on fisheries, including non-specific fuel subsidies (continuing on from a proposal in 2015),⁶⁶ and aquaculture (a recent US proposal).⁶⁷

Scope – The scope of the subsidies required to be notified has an important effect on the efficacy of the disciplines. The remaining division in the Working Consolidation is between *all* fisheries subsidies and only those which have been *prohibited* (as proposed by ACP). Both positions are nevertheless less onerous than in earlier proposals (including a notification pre-condition for a subsidy to be permitted, and the reverse, a presumption that non-notified subsidies were prohibited)⁶⁸.

Thresholds – Thresholds on the requirement to provide notifications, based on the size of the subsidies,⁶⁹ and/or the size of a Member's marine capture activity,⁷⁰ in earlier proposals, have not been adopted in the Working Consolidation.

Special and Differential Treatment – The need for special and differential treatment in respect of notification obligations is recognized in the Working Consolidation (and was in the Draft BA Ministerial Decision, but not the final Decision) – though its exact form remains unclear. Proposals have, as alternatives, suggested blanket exceptions from notification requirements for LDC Members,⁷¹ delayed implementation of requirements,⁷² as well as technical assistance to promote compliance.⁷³

Timing – As with the scope of notification obligations, the consensus in the Working Consolidation that fisheries subsidies notifications are to be subject to the same (annual) timing requirements as under Article 25.3 of the SCM Agreement represents a less onerous approach to those that have been previously proposed (for example, requiring *ex ante* notifications)⁷⁴.

Institutional and other aspects – In the Working Consolidation, a proposal for the SCM Committee to have an ongoing role as a central point for IUU fishing determinations by RFMOs and Members has been retained.

The Draft BA Ministerial Decision provided for Members, in the interim, to

provide notifications in respect of their compliance with the Decision within a year, and a review by the SCM Committee of those notifications, in the lead-up to the twelfth Ministerial Conference. However, this provision was not agreed upon in the final BA Ministerial Decision.

Other institutional measures, from earlier proposals - for example, a Secretariat “scoreboard”,⁷⁵ the right for Members to request additional information from other Members,⁷⁶ and/or the obligation for Members to establish ‘enquiry points’ (in an earlier proposal from the United States),⁷⁷ have likewise not been taken forward.

Relationship with other intergovernmental fora - the need for complementarity in the notification process with notifications in respect of other intergovernmental fora has been recognized from the early phases of negotiations.⁷⁸ A formal link with other institutions (reaching its high-water mark in the FAO ‘peer-review’ process provided for in the 2007 Chair’s compilation)⁷⁹ proved controversial, and the relationship remains implied, rather than express, in the BA Ministerial Decision and Working Consolidation.

Institutional Arrangements

The institutional framework for review of the effectiveness and implementation of the disciplines has seen little development from the Original Seven Proposals, given that the disciplines themselves remain under negotiation. Institutional arrangements are one of the remaining elements to be rationalized from the Negotiated Non-Paper and included in the next iteration of the Working Consolidation.

However, Members have recognized that regular review of the disciplines, once agreed, is warranted to ensure they are achieving their intended outcomes.

The strength of the negotiated disciplines will determine whether a ‘built-in agenda’ to continue the process of reform (where Members agree in advance to negotiate further strengthened disciplines at a specified later date), is necessary.⁸⁰ Given the difficulties in the process of negotiations to date, more limited disciplines with a ‘built-in agenda’ may be a more realistic, but less ambitious, way forward.

Dispute Resolution

Even the best-drafted international agreement is unenforceable without an effective and efficient dispute settlement mechanism.

However, unlike other elements discussed in this handbook, dispute resolution has not been a major focus of the negotiations in preparation for the Buenos Aires Ministerial Conference, and is not yet reflected in the Working Consolidation nor the BA Ministerial Decision.

Efficacy of existing mechanisms – Early negotiations touched upon dispute settlement by reference to the adequacy of the existing mechanisms under the Dispute Settlement Understanding (**DSU**) and the SCM Agreement,⁸¹ and how these mechanisms should be modified for fishery subsidy-related disputes, including how Panels would be able to obtain “*scientific and other technical expertise related to fisheries issues*”.⁸²

Members raised potential practical issues with the application of some elements of the SCM Agreement. For example,

countervailing duties, described by one Member as “*often the most practical ‘self-help’ response to subsidized imports*” available under the SCM Agreement, would be “*of little relevance*” in the fisheries subsidies context where “*most of the major subsidizing members are also major consumers...[and] tend to be major importers*”.⁸³ To address this problem, New Zealand, Iceland and Pakistan proposed countermeasures “*in the form of suspension of access of fishing vessels to port facilities for landing, transshipping or processing fish*”.⁸⁴

Other issues were raised with proving ‘serious prejudice’ to another Member (in the form of trade-distortive effects of subsidies) where fisheries products are heterogenous, and no unsubsidized reference prices are available.⁸⁵

Overlaps with other dispute resolution fora – Members will need to consider potential overlaps with existing obligations under the law of the sea connected to fisheries activities (in particular, provisions in the United Nations Convention on the Law of the Sea (**UNCLOS**) dealing with IUU fishing and rights associated with Members’ exclusive economic zones). UNCLOS has a wide membership (164 states) and contains a compulsory dispute settlement mechanism, involving the International Tribunal for the Law of the Sea and other tribunals.

The WTO dispute settlement regime provides one of the best mechanisms available in cases of non-compliance by

the parties. However, when drafting a dispute resolution clause specifically for fisheries subsidies, Members will need to take care to avoid contradictions with the UNCLOS regime, as well as address the interaction between the WTO dispute settlement system and UNCLOS dispute settlement in cases where disputes primarily (or incidentally) concern the interpretation and application of the UNCLOS.⁸⁶

Exclusion of contentious issues – A related concern is connected to the scope of the final agreement (disputed waters, zones, etc.) (see “Scope of Application”, above). In a proposal from China, the DSU does not apply to “*to any measure or situation having relevance to any issue of territoriality, sovereignty or maritime jurisdiction*”,⁸⁷ and where any such dispute does arise, the dispute “*shall be automatically terminated immediately, unless the DSB decides by consensus otherwise*”.⁸⁸

In contrast, a proposal from the Philippines includes a new prohibition in respect of subsidies to fishing “*in waters and areas that are claimed by more than one Member [at the time of the Agreement]*”, unless the Members involved have agreed between themselves to allow such subsidies.⁸⁹

Legal Form

Members have agreed on the basic framework of the instrument on fisheries subsidies, in the Working Consolidation and Negotiated Non-Paper (recognized in the BA Ministerial Decision).

However, the legal form of the instrument (an Annex to the SCM Agreement, a stand-alone multilateral agreement, further Ministerial Decision or Plurilateral Agreement), has not been fixed – though the BA Ministerial Decision implies that the final instrument will take the form of “an agreement”.

Each option has precedents in the WTO context and has different advantages and disadvantages.⁹⁰ For instance, an agreement in the form of an Annex to the SCM Agreement could more simply utilize the definitions and institutional infrastructure (i.e. the SCM Committee) that has been established by that Agreement. Enforceability would also be a key consideration (see Dispute Resolution, above).



The Way Forward

The eleventh Ministerial Conference in Buenos Aires presented an opportunity for Members to achieve political consensus on disciplines for fisheries subsidies. However, the BA Ministerial Decision, consistent with the overall outcome of the Conference, demonstrates the challenges of reaching agreement at the WTO. Nevertheless, Members have agreed on the framework of the final instrument, and have “*defined parameters*”⁹¹ for future works. In addition, Members have solidified their progress to date, agreeing to continue negotiations on the disciplines on the basis of the NGR’s working texts, with the aim of an agreement by the next Ministerial Conference to be held in 2019.

Although the creation of new disciplines on fisheries subsidies was triggered by Doha Declaration in 2001, it received new impetus in 2015 following the adoption by world leaders of the UN Sustainable Development Goals. SDG Target 14.6 sets a deadline of 2020 for the elimination and prohibition of certain forms of fisheries subsidies. From now until 2020, Members will have to make greater efforts and pursue negotiations *constructively* to meet this deadline. Members must recognize that it is “*not compatible to expect multilateralism to work and at the same time to expect to walk out with everything you wanted. This is a recipe for failure.*”⁹² The compromise to be reached must nevertheless be *effective* in order to have its desired impact on fish stocks.

The negotiations on fisheries subsidies are not impervious to the broader political currents at the WTO and the multilateral economic system more generally. Given the ebb and flow of negotiations over the past fifteen years, a legitimate concern remains - as to whether the Organization will be able to implement this new agenda and play its role in promoting and delivering prosperity for all.

Notes

¹ WT/MIN(17)/W/5.

² See, for example, WT/CTE/W/51 – “Environmental and Trade Benefits of Removing Subsidies in the Fisheries Sector” (United States).

³ TN/RL/W/246 – “Statement by the Chairman (25 November 2009)” (NGR).

⁴ TN/RL/GEN/181 – “Advancing Toward a Multilateral Outcome on Fisheries Subsidies in the WTO” (European Union).

⁵ WT/MIN(17)/W/5, [1].

⁶ WT/MIN(01)/DEC/1.

⁷ WT/MIN(01)/DEC/1, [31].

⁸ TN/RL/W/3 – “The Doha Mandate to Address Fisheries Subsidies: Issues” (Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the United States), [16].

⁹ See, for example TN/RL/W/11 – “Japan’s Basic Position on the Fisheries Subsidies Issue” (Japan).

¹⁰ For example, TN/RL/W/77, “Possible Approaches to Improved Disciplines on Fisheries Subsidies” (United States), [5]-[6];

TN/RL/W/115 – “Possible Approaches to Improved Disciplines on Fisheries Subsidies” (Chile).

¹¹ For example, TN/RL/W/58 – “Subsidies in the Fisheries Sector: Possible Categorizations” (Argentina, Chile, Iceland, New Zealand, Norway, and Peru).

¹² See the discussion in TN/RL/W/166 – “Fisheries Subsidies” (Argentina, Chile, Ecuador, New Zealand, Philippines, Peru), [4]-

[5], and TN/RL/W/172 – “Contribution to the Discussion on the Framework for the Disciplines on the Fisheries Subsidies”

(Japan, Republic of Korea, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu).

¹³ TN/RL/GEN/36 – “Fisheries Subsidies to Management Services” (New Zealand).

¹⁴ TN/RL/GEN/41 – “Fisheries Subsidies: Programmes for Decommissioning of Vessels and Licence Retirement” (United States).

¹⁵ TN/RL/GEN/47 – “IUU Fishing and Fisheries Subsidies” (Japan).

¹⁶ TN/RL/GEN/54 – “Contribution to the Discussion on the Framework for Disciplines on Fisheries Subsidies – Aquaculture” (Australia, Ecuador, New Zealand).

¹⁷ TN/RL/GEN/70 – “Subsidies to Fisheries Infrastructure” (New Zealand).

¹⁸ TN/RL/W/196 – “Fisheries Subsidies” (Brazil, Chile, Colombia, Ecuador, Iceland, New Zealand, Pakistan, Peru and the United States), [13].

¹⁹ WT/MIN(05)/DEC.

²⁰ TN/RL/21 – “Report by the Chairman to the Trade Negotiations Committee” (NGR), [4].

²¹ TN/RL/W/213 – “Draft Consolidated Chair Texts of the AD and SCM Agreements” (NGR).

²² TN/RL/W/232 – “Working Document from the Chairman” (NGR).

²³ TN/RL/W/232 – “Working Document from the Chairman” (NGR).

²⁴ TN/RL/22 – “Report by the Chairman to the Trade Negotiations Committee” (NGR), [4].

²⁵ TN/RL/W/236 – “New Draft Consolidated Chair Texts of the AD and SCM Agreements” (NGR).

²⁶ TN/RL/W/246 – “Statement by the Chairman (25 November 2009)” (NGR).

²⁷ TN/RL/W/254 – “Communication from the Chairman” (NGR), [44].

²⁸ TN/RL/W/255 – “Report by the Chairman of the Negotiating Group on Rules” (NGR), [1.3].

²⁹ TN/RL/W/258 – “Elements for Effective Disciplines on Fisheries Subsidies in the Post-Bali Work Programme” (Argentina, Iceland, New Zealand, Norway, Peru, and Uruguay).

³⁰ See, for example, TN/RL/W/264 – “Draft Decision on Fisheries Subsidies” (Peru); TN/RL/W/266 – “Ministerial Decision of XX December 2015” (Australia); TN/RL/W/267 – “Fisheries Subsidies - ACP Proposal” (ACP); TN/RL/W/269 – “Draft Decision on the Developmental and Food Security Aspects of Fisheries Subsidies Disciplines - ACP Proposal” (ACP).

³¹ WT/MIN(15)/DEC, [31].

³² WT/MIN(15)/37/Rev.1 – “Ministerial Statement on behalf of Argentina, Australia, Brunei Darussalam, Canada, Colombia, Costa Rica, Fiji, Haiti, Iceland, Mexico, New Zealand, Norway, Pakistan, Papua New Guinea, Paraguay, Peru, Senegal, Solomon Islands, Switzerland, United States, Uruguay, Vanuatu And OECS Economic Union WTO Members (Antigua And Barbuda, Dominica, Grenada, St Kitts and Nevis, St Lucia, and St Vincent and the Grenadines)”.

³³ TN/RL/W/272/Rev.1 – “Identifying the WTO contribution to the 2030 agenda for sustainable development: fisheries subsidies questions” (Colombia, Iceland, New Zealand, Norway, Pakistan and Uruguay).

³⁴ TN/RL/GEN/186 (New Zealand, Iceland, Pakistan); TN/RL/GEN/181/Rev.1 (EU); TN/RL/GEN/189/Rev.1 (Indonesia); TN/RL/GEN/192 (ACP); TN/RL/GEN/187/Rev.2 (Argentina, Colombia, Costa Rica, Panama, Peru, Uruguay); TN/RL/GEN/193 (LDCs); TN/RL/GEN/191 (Norway).

³⁵ TN/RL/W/273 – “Compilation Matrix of Textual Proposals Received to Date” (NGR).

³⁶ TN/RL/GEN/195 – “Prohibition of Subsidies to IUU Fishing” (China).

³⁷ TN/RL/GEN/196 – “Prohibition of Subsidies in Disputed Waters” (Philippines).

³⁸ JOB/GC/148 – “Procedures to Enhance Transparency and Strengthen Notification Requirements under WTO Agreements” (United States).

³⁹ WT/MIN(17)/W/4.

⁴⁰ <http://www.fao.org/docrep/005/y3536e/y3536e04.htm>

⁴¹ TN/RL/GEN/195 – “Prohibition of Subsidies to IUU Fishing” (China).

⁴² TN/RL/GEN/192- “Fisheries Subsidies Disciplines” (ACP).

⁴³ TN/RL/W/274/Rev.2- Working Documents on: Prohibited Subsidies Relating To IUU Fishing, Overfished Stocks, Overcapacity, Capacity-Enhancing Subsidies, And Overfishing; Notifications And Transparency; And Special And Differential Treatment, [3.1(d)]

⁴⁴ JOB/GC/148 - "Procedures to Enhance Transparency and Strengthen Notification Requirements under WTO Agreements" (United States).

⁴⁵ TN/RL/GEN/186 (New Zealand, Iceland, Pakistan); TN/RL/GEN/181/Rev.1 (EU); TN/RL/GEN/192 (ACP); TN/RL/GEN/187/Rev.2 (Argentina, Colombia, Costa Rica, Panama, Peru, Uruguay); TN/RL/GEN/193 (LDCs).

⁴⁶ TN/RL/GEN/186 - "Proposed MC11 Fisheries Subsidies Disciplines - Implementing SDG 14.6" (New Zealand, Iceland, Pakistan), [3.9]

⁴⁷ As established in article 61.2 of United Nations Convention on the Law of the Sea (UNCLOS) - A coastal State, taking into account the best scientific evidence available to it, has an obligation to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.

⁴⁸ TN/RL/GEN/186 - "Proposed MC11 Fisheries Subsidies Disciplines - Implementing SDG 14.6" (New Zealand, Iceland, Pakistan), [3.9]

⁴⁹ WT/MIN(17)/25 - "Prohibiting Subsidies To Fishing Overfished Stocks" (Canada, European Union, Iceland, New Zealand, Norway).

⁵⁰ http://www.fao.org/newsroom/en/focus/2004/47127/article_47132en.html

⁵¹ WT/MIN(17)/W/4, Draft Ministerial Decision Fisheries Subsidies.

⁵² See WT/MIN(01)/DEC/1,[28].

⁵³ TN/RL/M/5 - "Summary Report of the Meeting Held on 25-27 November 2002: Note by the Secretariat".

⁵⁴ TN/RL/M/6 - "Summary Report of the Meeting Held on 3, 6, 7 February 2003: Note by the Secretaries".

⁵⁵ WT/MIN(17)/W/5 - "Draft Ministerial Decision on Fisheries Subsidies".

⁵⁶ TN/RL/W/258 - "Elements for Effective Disciplines on Fisheries Subsidies in the Post-Bali Work Programme" (Argentina, Iceland, New Zealand, Norway, Peru, and Uruguay).

⁵⁷ TN/RL/W/154 - "Fisheries Subsidies: Overcapacity and Overexploitation" (New Zealand).

⁵⁸ TN/RL/W/3 - "The Doha Mandate to Address Fisheries Subsidies: Issues" (Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the United States).

⁵⁹ TN/RL/W/82 - "Submission of the European Communities to the Negotiating Group on Rules - Fisheries Subsidies" (European Communities), [7].

⁶⁰ TN/RL/W/143 - "Compilation of Issues and Proposals Identified by Participants in the Negotiating Group on Rules" (NGR), [115].

⁶¹ TN/RL/W/196 - "Fisheries Subsidies" (Brazil, Chile, Colombia, Ecuador, Iceland, New Zealand, Pakistan, Peru and the United States), [10].

⁶² TN/RL/GEN/79 - "Further Contribution to the Discussion on the Framework for Disciplines on Fisheries Subsidies" (Brazil), [5]; TN/RL/GEN/79/Rev.1 - "Possible Disciplines on Fisheries Subsidies" (Brazil), [7.2].

⁶³ TN/RL/GEN/191 - "Discipline and Prohibition on Subsidies to IUU-Fishing" (Norway).

⁶⁴ TN/RL/W/213 - "Draft Consolidated Chair Texts of the AD and SCM Agreements" (NGR), [VI.2-3].

⁶⁵ TN/RL/GEN/181/Rev.1 - "Advancing Toward a Multilateral Outcome on Fisheries Subsidies in the WTO" (EU), [3.2(e)].

⁶⁶ TN/RL/W/258 - "Elements for Effective Disciplines on Fisheries Subsidies in the Post-Bali Work Programme" (Argentina, Iceland, New Zealand, Norway, Peru, and Uruguay), [3.11].

⁶⁷ JOB/GC/148 - "Procedures to Enhance Transparency and Strengthen Notification Requirements under WTO Agreements" (United States), [13].

⁶⁸ TN/RL/W/82 - "Submission of the European Communities to the Negotiating Group on Rules - Fisheries Subsidies" (European Communities), [7]; TN/RL/W/213 - "Draft Consolidated Chair Texts of the AD and SCM Agreements" (NGR), [VIII.2].

⁶⁹ TN/RL/W/178 - "Fisheries Subsidies" (European Communities), [4].

⁷⁰ For example, TN/RL/W/263 - "EU Technical Paper in Follow-Up of its Transparency Submission (TN/RL/W/260)" (EU), [3].

⁷¹ TN/RL/GEN/193 - "LDC Group Fisheries Subsidies Text Proposal" (LDCs), [4.2].

⁷² TN/RL/GEN/187/Rev.2 - "Proposal for Disciplines on Fisheries Subsidies" (Argentina, Colombia, Costa Rica, Panama, Peru, Uruguay), [3.2].

⁷³ For example, TN/RL/GEN/187/Rev.2 - "Proposal for Disciplines on Fisheries Subsidies" (Argentina, Colombia, Costa Rica, Panama, Peru, Uruguay), [4.1] - the assistance itself subject to notification - [4.2].

⁷⁴ TN/L/GEN/134 - "Fisheries Subsidies" (European Communities), [5.1]-[5.2].

⁷⁵ TN/RL/W/82 - "Submission of the European Communities to the Negotiating Group on Rules - Fisheries Subsidies" (European Communities), [7].

⁷⁶ See also, Article 8.3 of the SCM Agreement; TN/RL/GEN/79 - "Further Contribution to the Discussion on the Framework for Disciplines on Fisheries Subsidies" (Brazil), [6.4].

⁷⁷ TN/RL/GEN/145 - "Fisheries Subsidies: Proposed New Disciplines" (United States), [7.2].

⁷⁸ See, for example, TN/RL/W/77, "Possible Approaches to Improved Disciplines on Fisheries Subsidies" (United States); TN/RL/W/115 - "Possible Approaches to Improved Disciplines on Fisheries Subsidies" (Chile).

⁷⁹ TN/RL/W/213 - "Draft Consolidated Chair Texts of the AD and SCM Agreements" (NGR), [V.1].

⁸⁰ See, for example, TN/RL/W/258 - "Elements for Effective Disciplines on Fisheries Subsidies in the Post-Bali Work Programme" (Argentina, Iceland, New Zealand, Norway, Peru, and Uruguay), [3.13]; TN/RL/W/261 - "Technical Paper on Fisheries Subsidies" (New Zealand), [3.8].

⁸¹ TN/RL/GEN/150/Rev.1 - "Fisheries Subsidies: Proposed New Disciplines, Revised Proposal from the Republic of Indonesia Revision" (Indonesia); TN/RL/GEN/145 - "Fisheries Subsidies: Proposed New Disciplines, Proposal from the United States" (United States); TN/RL/W/218 - "WTO Disciplines on Fisheries Subsidies: Elements of the Chair's Draft, communication from New Zealand" (New Zealand).

⁸² TN/RL/W/236 - "New Draft Consolidated Chair Texts of the AD and SCM Agreements".

⁸³ TN/RL/W/12 - "Fisheries Subsidies: Limitations of Existing Subsidy Disciplines" (New Zealand), [2]-[3].

⁸⁴ TN/RL/GEN/186 - "Proposed MC11 Fisheries Subsidies Disciplines - Implementing SDG 14.6" (New Zealand, Iceland, Pakistan), [3.3].

⁸⁵ TN/RL/W/12 - "Fisheries Subsidies: Limitations of Existing Subsidy Disciplines" (New Zealand), [4]-[13].

⁸⁶ Margaret A. Young, *The Law of the Sea Obligations Underpinning Fisheries Subsidies Disciplines*, ICTSD, reference paper.

⁸⁷ TN/RL/GEN/195 – “Prohibition of Subsidies to IUU Fishing” (China), [3.3].

⁸⁸ TN/RL/GEN/195 – “Prohibition of Subsidies to IUU Fishing” (China), [3.3.1].

⁸⁹ TN/RL/GEN/196 – “Prohibition of Subsidies in Disputed Waters” (the Philippines).

⁹⁰ See Lorand Bartels and Tibisay Morgandi, *Options for the Legal Form of a WTO Agreement on Fisheries Subsidies*, ICTSD, reference paper.

⁹¹ Final remarks by Susana Malcorra, Argentine Minister and Chair of MC11, MC11 Closing Ceremony.

⁹² Final remarks by Director-General Azevêdo, MC11 Closing Ceremony.

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