

Draft Proposal for an LDAC advice On disciplining fisheries subsidies

~~Version 1. November 2017~~

~~Version 2. April 2018 (revised after WG5 meeting on 8/3/2018)~~

Version 3. November 2018 (revised after WG5 meeting on 24/10/2018)

Background

WTO negotiations on fisheries subsidies were launched in 2001 at the Doha Ministerial Conference, with a mandate to "clarify and improve" existing WTO disciplines on fisheries subsidies. That mandate was elaborated in 2005 at the Hong Kong Ministerial Conference, including with a call for prohibiting certain forms of fisheries subsidies that contribute to overcapacity and overfishing.

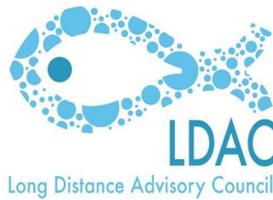
In preparation of the 2017 Ministerial Conference (MC11) held in Buenos Aires on 10-13 December, several proposals to end harmful subsidies were circulated during the summer 2017 by the Chair of the WTO Negotiating Group on Rules. These proposals came from the European Union¹, Indonesia, Norway, African, Caribbean and Pacific Group of States (ACP), the Least-Developed Country Group (LDCs), a group of six Latin American countries (LAC - Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay), a joint proposal by New Zealand, Iceland and Pakistan.

In October², WTO members who had submitted these proposals jointly handed in a compilation text for the Negotiating Group on Rules. New proposals were also made, from China and the US for discussion at MC11.

At MC11 in December 2017, ministers decided on a work programme to conclude the negotiations by aiming to adopt, at the 2019 Ministerial Conference, an agreement on fisheries subsidies which delivers on Sustainable Development Goal (SDG) 14.6.

¹ https://www.wto.org/english/news_e/news17_e/fish_20jul17_e.htm

² All proposals can be found on news page on WTO subsidies negotiations
https://www.wto.org/english/news_e/archive_e/fish_arc_e.htm



General Considerations

The LDAC found the outcome of the recommendations agreed in relation to fisheries subsidies as disappointing.

Herewith is the MC11 statement made at Buenos Aires (also available at WTO website³):

WTO members agreed to continue to engage constructively in the 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 illegal, unreported and unregulated (IUU) fishing. The decision recognizes that appropriate and effective special and differential treatment for developing country members and least-developed country members should be an integral part of the negotiations.

With this decision, the WTO has made a multilateral commitment to fulfil Sustainable Development Goal 14.6, which calls for the prohibition and elimination, by 2020, of fisheries subsidies that contribute to IUU fishing and to overcapacity and overfishing, with special and differential treatment for developing and least-developed country WTO members to be an integral part of the negotiations.

The above referred statement is considered by the LDAC as a missed opportunity and as a decision to defer discussions on this matter until December 2019. The LDAC supports, in line with the EU proposal submitted in July 2017, a more ambitious multilateral agreement on disciplining fisheries subsidies with the view of prohibiting certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and to eliminate subsidies that contribute to IUU fishing by 2020 as stated under SDG 14.6.

The LDAC acknowledges that certain forms of fisheries subsidies should continue, but with a clear objective of environmental, economic and social sustainability.

The LDAC acknowledges that the financial contribution provided by the EU to third countries through its network of Sustainable Fisheries Partnership Agreements is not considered a subsidy at the WTO level in line with a UNEP report from 2008: “[...] *the detailed legal analysis of the WTO Agreement on Subsidies and Countervailing Measures and relevant jurisprudence provided by this paper leads to the conclusion that access agreements per se do not breach any rules of the ASCM. Only where the Distant Water Fishing Nation is not sufficiently reimbursed by its fleet for the provision of access rights, the corresponding financial element of access agreements may be covered by ASCM disciplines. The amount of this “subsidy element”, arising between a Distant Water Fishing Nation and its own fleet, would have to be determined on a case-by-case basis.*”⁴

³ https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm

⁴ <https://unep.ch/etb/publications/FS%20Access%20Agreements/Inside%20FS%20Access%20Agreements.pdf>



Specific Comments on key issues discussed at WTO

1. Scope of the prohibitions for subsidies

The LDAC regards as very positive that all proposals envisage a prohibition of subsidies related to vessels engaged in IUU fishing, in keeping with SDG14.6.

However, an agreement must also address others topics as overfishing and overcapacity.

Both the fishing industry and the ONG which are members of the LDAC support that there should be not any direct forms of subsidies to the fuel, in order to avoid distortions in the international market of fish products and/or unfair competition between operators.

The fishing industry of the LDAC would support the EU proposal to establish a positive list of aids which are excluded from the scope of the agreement, and notably the inclusion of the fuel de-taxation schemes in this list as EU proposes. These schemes do not lead to supply costs that are lower than the marine fuel market prices, and do not contribute to overfishing or fishing overcapacity whether fleet capacity and fishing mortality are managed. Furthermore energy products supplied for use as fuel for the purposes of navigation have been historically exempted from taxation and currently regulated by Art 14 of Council Directive 2003/96/EC. These schemes are therefore not exclusive for fishing, but an exemption to international sectors such as shipping and air navigation, and guarantee a level playing field as boats can move to countries where tax rates or prices were lower.

The fishing industry of the LDAC believes that it is not necessarily to enumerate the types of subsidies that would be prohibited, as the subsidies concerned by the agreement would be those within the meaning of articles 1.1 and 2 of the SCM agreement.

The NGO group of the LDAC believe that fuel de-taxation schemes are an indirect form of subsidy and that the issue of fuel subsidies should be addressed, arguably those that have the greatest impact on overcapacity. According to UNCTAD, without some form of fuel subsidies certain distant water fishing operations would not be commercially viable.

The NGO group of the LDAC believes that harmful subsidies should be enumerated and classified as in the article 1 of the *EU proposal for WTO disciplines on fisheries subsidies [TN/RL/GEN/181/Rev.1]*, tabled in July 2017, to prohibit: a) *subsidies that increase the marine fishing capacity of a fishing vessel or support the acquisition of equipment that increases the ability of a fishing vessel to find fish;* b) *subsidies that support the construction of fishing vessels or the importation of fishing vessels;* and c) *subsidies for the transfer of fishing vessels to other countries including through the creation of joint ventures with partners of those countries.*



2. Overfished Stocks

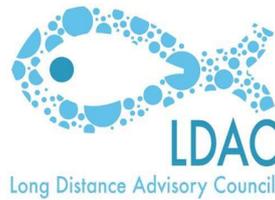
It is important that the agreement contains a clause on overfishing that shall be linked to subsidies that negatively affect targeted fish stocks, in order to comply with SDG 14.6 and to properly address the issue of unsustainable fishing. It is the opinion of the LDAC that the exemption proposed for certain fish stocks inside the territorial sea makes no sense, as very few stocks are only present in the territorial sea and as there are not only subsistence fisheries which take place inside the territorial sea.

A key issue lies in the definition of '*overfished*' stocks. It will be important to clearly agree on a workable definition of overfishing, namely a stock is overfished when it is at such a low level that fishing mortality 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 knowledge available.

In this context it shall be stated that fisheries subsidies have a negative impact on overfished stocks, unless there is a recovery or management plan in place with sufficient scientific and compliance safeguards to reverse this trend.

Regarding application of precautionary approach, the industry members of the LDAC oppose that, in the absence of sufficient data to determine whether a stock is overfished or not by national authorities or by relevant Regional Fisheries Management Organisation or Arrangement, the stock shall be presumed to be in an overfished condition. In this context, it shall be recalled that a decrease of the individual yields and a decrease of the global catches do not necessarily characterize or relates to situations of overfishing understood under the categorisation of FAO Report on the State of World Fisheries and Aquaculture (SOFIA). For example, a decrease of the individual yields could be a normal step on the way for reaching MSY in a transitional period. Furthermore, a decrease of the global catches is always observed when fishing mortality is reduced for restoring fish stocks

The NGO members of the LDAC are in favour of the adoption of the precautionary principle to be applied in cases above mentioned of lack of sufficient data for a stock to be considered overfished in accordance with the definition set in the Basic Regulation (EU) No 1380/2013 on the Common Fisheries Policy.



3 Overcapacity

It is equally important that the agreement contains a provision on the need to prevent overcapacity in a broad sense, given its role as a key driver for overfishing. However, the fishing industry members of the LDAC wonder if the agreement should include a specific discipline concerning harmful subsidies driving to overcapacity as this type of subsidies should be already included in the scope of the agreement.

In those cases of declared overcapacity in a fishery, any subsidy for fleet plans for permanent scrapping/decommissioning of vessels should be positively considered whenever such decommissioning plans are duly justified on scientific terms and develop with adequate control procedures and safeguards.

4 Geographic Scope

The LDAC advocates the extension of the prohibitions to the entire ocean and not limiting them by reference to specific geographic areas (e.g. a country's EEZ, or all waters except territorial sea). Geographical limitations could present obstacles for the conservation and sustainable exploitation of straddling and migratory fish stocks.

Furthermore, under certain circumstances it can be difficult to track a subsidy to a particular fishing area, as the beneficiary vessel or company can fish in different areas in different seasons and over the years.

It must be noted that, in the field of international waters, certain RFMOs such as SEAFO or SIOFA have a limited jurisdiction and mandate to regulate straddling stocks and do not necessarily follow the same management regimes or recommendations than those in place for the adjacent waters of the EEZ's third countries.

5 Exemptions

WTO members should be careful that the exclusion of aquaculture does not create a legal loophole concerning subsidies for forage fish, like small pelagics, which are removed from the ocean to supply and feed the industrial aquaculture.

Furthermore, fisheries subsidies seeking to promote positive social and environmental objectives, such as those improving health and safe working conditions for fishers, or promoting sustainable fisheries (like support to research, (co)-management, etc.), should **not** fall within the category of subsidies considered for this negotiation.



6 Special and differential treatment

In view of the importance of protecting fish resources on which developing countries fishing communities depend for their livelihoods, special and differentiated treatment needs to be appropriate and equitable, and must not undermine the disciplines effectiveness.

However, key prohibitions for certain subsidies should apply to all cases, in particular the elimination of subsidies which contribute to IUU fishing.

When it comes to exemption of disciplines for subsidies to artisanal/subsistence fisheries in developing countries, it needs to be noted that, according to several studies, this sector does not currently benefit from an important share of global fisheries subsidies⁵.

Many artisanal fishing organisations in developing countries demand subsidies for improving sea safety, health and hygiene conditions in the fishing sector; or for improving fisheries management to the benefit of small scale fishing communities (e.g. generating gender disaggregated data on artisanal fisheries, investing in surveillance for the protection of artisanal fishing zone, in co-management initiatives, etc.).

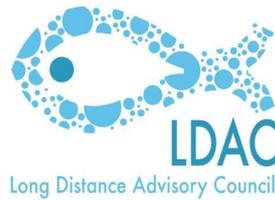
Defining exemptions for the artisanal/subsistence fisheries by linking them to the territorial sea would not only allow to exempt in all cases the artisanal/subsistence fisheries without ambiguity but also prevent divergent measures among countries.

To exempt certain disciplines of subsidies for artisanal/subsistence fisheries, should be rather established on the basis of a positive list of disciplines and clear criteria adopted to define artisanal fisheries in line with the approach suggested in the FAO Voluntary Guidelines for Sustainable Small-Scale fisheries⁶.

As a pre-condition, there shall be a management plan in force for the fisheries where the subsidised fleet will operate, to avoid that the exemption of discipline leads to over-capacity and over-fishing, which ultimately would damage the fishing community prospects. For this purpose, the vessel benefitting from the subsidy cannot target overfished stocks for which any recovery or rebuilding plan was set.

⁵ <http://greenfiscalpolicy.org/policy-insights/how-subsidies-affect-the-economic-viability-of-small-scale-fisheries-schuhbauer-et-al/>

⁶ These Guidelines recognize the great diversity of small-scale fisheries and that there is no single, agreed definition of the subsector. Accordingly, the definition of small-scale fisheries should be undertaken at a regional, sub regional or national level and according to the particular context in which they are to be applied. States should ensure that such definition exercise is guided by substantive participatory, consultative processes so that the voices of both men and women are heard.



7 Transparency

Data collection on fisheries subsidies, and their publication, is an essential component in order to understand, characterize and monitor the subsidies granted. The objective should be to have full transparency on the type, use and amount of each fishery subsidy.

The LDAC agrees that such notifications should not be overly burdensome nor increase complexity for developing countries with capacity constraints, especially LDCs.

However, as no country should be exempted from notification requirements, specific issues could be addressed under Technical Cooperation.

A list of minimum information such notifications should include:

- The programme name;
- Legal basis and granting authority of the programme;
- Level of support provided;
- Type of marine fishing activity supported;
- The name of the subsidy recipient,
- Information about what goal the subsidy is granted for.

It is important that all information coming from current and future notifications should be compiled in an open and user-friendly database or IT platform.

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