



**ACP GROUP TEXT PROPOSAL  
FISHERIES SUBSIDIES DISCIPLINES**

**SUBMISSION BY GUYANA ON BEHALF OF THE ACP GROUP**

The following communication, dated 13 July 2017, is being circulated at the request of the Delegation of Guyana on behalf of the ACP Group.

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*Preamble*

The Ministerial Conference,

*Recalling* the mandate contained in the 2001 Doha Declaration, where Ministers agreed to clarify and improve WTO rules that apply to fisheries subsidies,

*Acknowledging* the importance of the sector to development priorities, poverty reduction, livelihood, sustainable development of fisheries capacity throughout the value chain, and food security concerns of developing countries

*Reaffirming* our commitment under the 2030 Development Agenda to prohibit, by 2020, 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 WTO fisheries subsidies negotiation.

*Definitions*

"Exclusive economic zone" is defined by principles found in Part V of the United Nations Convention on the Law of the Sea. Where any Member is not party to UNCLOS, similar principles on the exclusive economic zone adopted in domestic legislation may apply.

"Operator" includes any person or enterprise involved in the operation, management or ownership of a vessel involved in fishing.

"Fishing or fishing activity" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish, including transshipping, and processing of fish at sea; and shall be confined to wild marine capture;

"Overfished stocks" are fish stocks that are recognized as overfished either by the national jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation.

"Large-scale industrial fishing" means fishing that is not semi-industrial, small-scale commercial, artisanal, or subsistence fishing.<sup>1</sup>

"Fishing vessel" means any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for commercial fishing or fishing activities and/or the definition for fishing vessel as applied in a Member's national laws.

### *Article 1*

#### *Scope*

1.1 Subsidies to vessels, operators, fishing or fishing activities shall be defined according to paragraph 1 of Article 1 of the WTO Agreement on Subsidies and Countervailing Measures (SCM) and to the extent they are specific within the meaning of Article 2 of the SCM Agreement.<sup>2</sup>

1.2 Fisheries subsidies shall only be attributable to Members granting the subsidies regardless of the flag(s) of the vessels(s) involved or the application of rules of origin of the fish involved.

1.3 Moreover, the scope of this Agreement shall not apply to

- a) Inland fisheries;
- b) Aquaculture; and
- c) Recreational fishing.

1.4 Nothing in this Agreement shall affect the claims of Members concerning disputed waters.

### *Article 2*

#### *Prohibited Subsidies*

2.1 For purposes of this Agreement, the following subsidies shall be prohibited:

- a) Subsidies to fishing vessels, fishing or fishing activity of targeted fish stocks that are in an overfished condition;
- b) Subsidies provided to vessels or operators engaged in illegal, unreported and unregulated (IUU) fishing<sup>3</sup>; and
- c) Subsidies to fishing vessels and fishing or fishing activity for capital<sup>4</sup> and operating costs<sup>5</sup>, within the meaning of instruments elaborated under SCM Agreement Article 1.1, that contribute to overfishing and overcapacity, provided:
  - i. to a developing country Member's large scale industrial fishing and fishing activity outside of their own EEZ<sup>6</sup>; and
  - ii. by developed country Members.

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<sup>1</sup> Semi-industrial, small-scale commercial, artisanal, or subsistence fishing are defined according national laws and/or international agreements to which the Members are party.

<sup>2</sup> Excluded subsidies are those for disaster relief or safety, research and development, and sustainability of stocks, the acquisition and installation of equipment for vessel and crew safety, the adoption of techniques or technology aimed at reducing the environmental impact of wild marine capture (such as by catch reduction or turtle excluder devices) or for improving compliance with fisheries management regimes aimed at sustainable use and conservation (such as devices for vessel monitoring systems); and for increasing resilience or reducing vulnerability to climate change.

<sup>3</sup> Defined in accordance with Annex I of this Agreement and as implemented under national laws and regulations. National and RFMO IUU lists, established in accordance with due process mechanisms, may be taken into account.

<sup>4</sup> May include payments for vessel construction and modernization, purchase of machines and equipment for fishing vessels (including fishing gear and engine, fish-processing machinery, fish-finding technology, refrigerators, or machine for sorting or cleaning fish), and tax exemptions.

<sup>5</sup> May include provision for fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support; or operating losses of such vessels or activities.

<sup>6</sup> Noting the rights, jurisdiction, and duties of coastal states among others, found under UNCLOS Part V.

2.2 Notwithstanding the provisions of 2.1, due regard should be given to jurisdictions with multi-species catch.

*Article 3*

*Transitional Arrangements*

3.1 No Member shall be obliged to apply Article 2 of this Agreement before the expiry of a period of one year after entry into force of this Agreement.

3.2 Developing countries are entitled to a further delay of [x] years, and LDCs are entitled to a further [x] years.

*Article 4*

*Special and Differential Treatment*

4.1 Prohibitions other than those outlined in Article 2.1(a) and 2.1(b) above shall not apply to LDCs.

4.2 With respect to Article 2.1.b, in order to establish measures against unreported and unregulated fishing, after the period stipulated in Article 3.1 and 3.2, developing countries not engaged in large scale industrial distant water fishing are entitled to apply [x] additional years and LDCs [x] additional years of transition period, except for illegal fishing.

4.3 The prohibition under 2.1(c) (i) shall not apply to subsidies provided by a developing country supporting fishing outside of their EEZ, which exclusively exploits quotas or any other rights, established by a regional fisheries management organization (RFMO) or a regional fisheries management arrangement.

4.4 Developed countries, and developing countries in a position to do so shall provide, and relevant agencies are invited to provide, targeted technical assistance and capacity building to developing countries, in particular LDCs and small, vulnerable economies (SVEs) to:

- a) address institutional and financial difficulties faced by LDCs and developing countries with constraints to implement this Agreement;
- b) establish reporting mechanisms and regulations to prevent unreported and unregulated fishing;
- c) conduct stock assessments;
- d) conduct monitoring, control and surveillance of fish stocks; and
- e) research and development

4.5 The operationalization of disciplines on fisheries subsidies should not impede the ability developing countries and LDCs to develop and diversify their fisheries sector.

*Article 5*

*Notification*

5.1 The Parties shall notify, in accordance with the provisions of Article XVI:1 of GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, all subsidies that support, directly or indirectly, marine fishing activity, to the extent that country is providing subsidies prohibited under Article 2 of this Agreement.<sup>7</sup>

5.2 Notification requirements shall not be burdensome on developing countries with capacity constraints, especially LDCs.

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<sup>7</sup> Nothing in this notification provision requires the provision of confidential information, including confidential business information.

Annex I

A. Illegal fishing refers to activities:

- i. conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
- ii. conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
- iii. in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

B. Unreported fishing refers to fishing activities:

- i. which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
- ii. undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

C. Unregulated fishing refers to fishing activities:

- i. in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
- ii. in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

D. Notwithstanding paragraph C, certain unregulated fishing may take place in a manner which is not in violation of applicable international law.

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