



## Note

# Options for Developing Countries and Least Developed Countries (LDCs) in the WTO Fisheries Subsidies Negotiations

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### Summary

This paper reviews key definitions being proposed in the context of WTO fisheries negotiations, highlighting divergences as well as similarities in different proposals. In particular, it focuses on definitions for Illegal, Unreported and Unregulated (IUU) fishing; overfished/overfished stocks; and subsidies. The analysis also considers the policy implications and possible recommendations for developing and least developed countries towards a future fisheries subsidies agreement.

## Introduction

In the run-up to the 11th WTO Ministerial Conference (MC11), the then chair of the Negotiating Group on Rules (NGR), Ambassador Wayne McCook of Jamaica circulated a document, which compiled seven fisheries subsidies proposals/submissions in a form of a matrix.<sup>1</sup> This matrix compiled various definitions from the seven proposals covering: operator, fishing/fishing activity, fishing vessel, subsistence/artisanal/small-scale fishing, Exclusive Economic Zone (EEZ), etc. The analysis in this paper, however, focuses on three definitions, namely, illegal, unreported and unregulated (IUU) fishing; overfished/overfished stocks; and subsidies (as illustrated in annex 1). The focus on these issues are largely due to the fact that they are the main areas for proposed disciplines, which can be of impact as well as benefit to developing countries.

This paper hence highlights the corresponding definitions in the matrix, showing that there are divergences as well as similarities in the different proposals. Analysis of the definitions are also made, with special emphasis on the relevant policy implications/recommendations for developing and least developed countries towards a future fisheries subsidies Agreement. Key discussions in the ongoing fisheries subsidies negotiations at the WTO, in particular, with respect to the exchange of information and views by Members on IUU, overfished stocks and subsidies are also depicted. Lastly, the treatment of these definitions by other

international organisations are additionally highlighted as well.

## Illegal, unreported and unregulated (IUU) fishing

As follows, from the 28 July 2017 matrix, while the proposal by Norway does not contain any definition of IUU, all the other six proposals from New Zealand, et al; EU; Indonesia; ACP Group; Argentina et al; and the LDC Group refer to Paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organisation, which defines:

- **Illegal fishing activities** to be “activities 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; conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization (RFMOs) 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 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.
- **Unreported fishing as fishing activities**

<sup>1</sup>The compilation matrix, therefore, comprised of seven proposals from New Zealand, Iceland and Pakistan; the European Union (EU); Indonesia; the African, Caribbean, Pacific (ACP) Group; Argentina, Colombia, Costa Rica,

Panama, Peru and Uruguay; the LDC Group; and Norway, which were to serve as the foundation for fisheries subsidies negotiation at MC11.

which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or 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.

- **Unregulated fishing** as fishing activities 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 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. Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action` (IPOA)”<sup>2</sup>

However, one divergence exists under this definition, as although the ACP Group proposal also defines IUU in accordance with Paragraph 3 of the above Agreement. The Group goes

further and states that IUU should also be defined and implemented under national laws and regulations. National and RFMO IUU lists, established in accordance with due process mechanisms.

On the above basis, developing countries and LDCs will need to pay special attention to the similarities and divergences in the definitions/proposals, in order to attain a fisheries subsidies Agreement, which does not exclude them, but instead rightfully takes their wishes into consideration.

Here, since almost all these countries are members of the Food and Agriculture Organization (FAO), they may wish to adopt its definition under Paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing as some consensus appears to have emerged between them.

In order to provide for the special situation and developmental objectives of developing countries and LDCs, in the future agreement, it would also be vital to add the supplementary feature of the ACP Group proposal, which touches upon IUU being implemented under national laws and regulations, as well as national and RFMO IUU lists. From a negotiation perspective, this addition intrinsically demonstrates the importance of accommodating different country laws as they are at varying levels of development.

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<sup>2</sup>Paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organisation

## Overfished/overfished stocks

The proposals by Indonesia, Argentina, et al and Norway do not give definitions under this title. However, the proposals by New Zealand et al; EU; ACP Group; and LDC Group all affirm that “overfished stocks are fish stocks that are recognized as overfished either by the national jurisdiction/authorities where the fishing is taking place or by a relevant Regional Fisheries Management Organisation”.<sup>3</sup>

On divergences, the LDC Group proposal agrees that 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 (RFMOs), but this position should be based on best scientific evidence available to them”. Similarly, the EU proposal also agrees with this. However, it further states that “in the absence of sufficient data to make such a determination, the stock shall be presumed to be overfished”.

On the other hand, while the proposal by New Zealand et al also agrees that overfished stocks are to be recognised by national jurisdictions where the fishing is taking place or by relevant RFMOs, it goes further by defining overfished as where a “fish stock is at such a low level that mortality from fishing 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 evidence available”.<sup>4</sup>

With this, the key objective for developing countries and LDCs in the negotiation should be

to attain an Agreement that is simple, inexpensive and less burdensome to them. Due to this, the EU proposal that in the absence of sufficient data to make such a determination, the stock shall be presumed to be overfished is a good flexibility for developing countries and LDCs as it acknowledges the limited availability of data in these countries, but still allows for the presumption of overfished stocks. Likewise, the LDC proposal that stocks in an overfished condition are those recognised as such by national jurisdiction where the fishing is taking place or by relevant RFMOs based on best scientific evidence available to them is appropriate as it acknowledges the different technical and research capabilities of each Member.

However, the proposal by New Zealand et al that overfishing is to be understood as where a fish stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield, would be too onerous and complex for developing countries and LDCs as these countries may not/do not have the technical capacity in the first place, to determine the low levels of fish stocks.

## Subsidies

Here, all seven proposals refer to subsidies defined within the meaning of Article 1.1 of the SCM Agreement, which are specific in accordance with the provisions of Article 2 of the same Agreement. Thus, Article 1.1 states that “a subsidy shall be deemed to exist if: (a)(1) there is a financial contribution by a government or any public body within the territory of a

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<sup>3</sup>Annex 1

<sup>4</sup>Ibid

Member (referred to in this Agreement as "government"), i.e., where:

- A government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
- (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);
- (iii) a government provides goods or services other than general infrastructure, or purchases goods; and
- (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments”.

Article 2 further states that “in order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

- Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.
- (b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the

eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification.

- (c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

2.2 A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.

2.3 Any subsidy falling under the provisions of Article 3 shall be deemed to be specific.

2.4 Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.”<sup>5</sup>

However, while Norway did not indicate any definition of what would constitute subsidies under a future fisheries subsidies agreement. The LDC Group proposal specifically states that this “agreement applies to subsidies defined within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures, which are specific in accordance with the provisions of Article 2 of that Agreement and are provided to the fisheries sector. While the ACP Group proposal explicitly mentions subsidies to vessels, operators, fishing or fishing activities. On the other hand, the proposals by New Zealand et al and Argentina et al refer to “[partial] subsidies within the meaning of Article 1.1 of the SCM Agreement, while the proposal by the EU clearly states that this Agreement does not apply to [...] fuel de-taxation schemes [...].

With this, and towards a future fisheries subsidies Agreement, unclear/broad elements and terms such as partial subsidies as proposed by New Zealand et al and Argentina et al can present challenges to developing countries due to its ambiguous nature. In order to ensure specificity, the concept and list of subsidies, which have been proposed by the ACP and LDC group should be adopted. For instance, the LDC proposal defines a subsidy within the meaning of Article 1.1 of the Agreement on Subsidies and

Countervailing Measures, which are specific in accordance with the provisions of Article 2 of that Agreement and are provided specifically to the fisheries sector while the ACP proposal clearly refers to subsidies to vessels, operators, fishing or fishing activities.

The EU also proposed that the future agreement should not apply to fuel de-taxation schemes. Thereby, the EU wishes to continue providing fuel subsidies to its fishing industry. However, developing countries will have to affirm that such exemptions are not covered by the future agreement as the ACP proposal specifically calls for disciplines to subsidies provided to vessels or fishing activities. Moreover, fuel subsidies (e.g. tax exceptions) are perceived to be capacity-enhancing or bad subsidies as they can/may result in overcapacity and overfishing by the means of artificial profit increases.<sup>6</sup>

## Recent Reports on Ongoing Fisheries Negotiations at the WTO

At MC11, even with the guidance of the matrix, there was no tangible outcome on fisheries subsidies due to the divergences in the proposals. However, the Ministerial decision declared that “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-

<sup>5</sup>Agreement on Subsidies and Countervailing Measures (SCM) Agreement

<sup>6</sup>Fuel subsidies in the EU fisheries sector - European Parliament

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”.<sup>7</sup>

Due to this, on 28 March 2018, the NGR elected its new chair, Ambassador Roberto Zapata Barradas of Mexico, and the best way forward in organising future work on fisheries subsidies were discussed.<sup>8</sup> Consequently, on “11 April 2018, at a meeting of the NGR, WTO Members agreed on a work programme for future fisheries subsidies negotiations. A Cluster of meetings were, therefore, agreed on, each planned around a theme for May, June and July.

The first cluster of meetings were, thus, scheduled for 14-17 May 2018, here Members efforts would focus around subsidies that enhance and/or maintain fishing capacity and subsidies that contribute to overcapacity and overfishing. Whilst at the 11-14 June cluster, members would focus on subsidies for fishing in overexploited stocks, and at the 23-25 July cluster, the theme would be subsidies to IUU fishing”.<sup>9</sup>

Accordingly, on 14-17 May 2018, Members of the NGR held their first cluster of meetings on fisheries subsidies, where Members “exchanged

views and information on support for capital and operating costs of fishing, and related policies, in the context of ongoing work on disciplining subsidies that enhance or maintain fishing capacity or contribute to overcapacity and overfishing”.<sup>10</sup>

On 11-14 June 2018, the second cluster meetings were held, where “Members in the NGR exchanged views and information on subsidies for fishing in overexploited stocks”.<sup>11</sup> While on 24 – 26 July 2018, the meetings began with “presentations by fisheries management experts on processes for determining IUU fishing. Members then held a thematic discussion focused on issues surrounding subsidies to IUU fishing”.<sup>12</sup>

On 24 - 28 September 2018, the first cluster of the September – December meetings took place, where “Members exchanged views and information on enhancing the transparency of fishery subsidy programmes and establishing institutional arrangements for monitoring the implementation of new disciplines.”<sup>13</sup> And at the cluster meetings of 5 - 9 November 2018, “WTO members focused on disciplining subsidies that affect stocks in an overfished condition and also emphasised the need to shift to text-based negotiating mode”.<sup>14</sup>

<sup>7</sup>WTO Ministerial Decision on fisheries subsidies

<sup>8</sup>New Negotiating Group on Rules chair kicks off consultations on fisheries subsidies

[https://www.wto.org/english/news\\_e/news18\\_e/rule\\_28mar18\\_e.htm](https://www.wto.org/english/news_e/news18_e/rule_28mar18_e.htm)

<sup>9</sup>Members agree on May-July work programme for fisheries subsidies negotiations

[https://www.wto.org/english/news\\_e/news18\\_e/fish\\_11apr18\\_e.htm](https://www.wto.org/english/news_e/news18_e/fish_11apr18_e.htm)

<sup>10</sup>WTO members complete first cluster of meetings for fisheries subsidies negotiations since MC11

[https://www.wto.org/english/news\\_e/news18\\_e/fish\\_18may18\\_e.htm](https://www.wto.org/english/news_e/news18_e/fish_18may18_e.htm)

<sup>11</sup>WTO members focus on subsidies for fishing in overexploited stocks at June meetings

[https://www.wto.org/english/news\\_e/news18\\_e/fish\\_11jun18\\_e.htm](https://www.wto.org/english/news_e/news18_e/fish_11jun18_e.htm)

<sup>12</sup>WTO members take up disciplines on subsidies to IUU fishing at July meetings

[https://www.wto.org/english/news\\_e/news18\\_e/fish\\_26jul18\\_e.htm](https://www.wto.org/english/news_e/news18_e/fish_26jul18_e.htm)

<sup>13</sup>24 - 28 September 2018 - Members complete first cluster of meetings in Sept-Dec fisheries subsidies work programme.

[https://www.wto.org/english/news\\_e/news18\\_e/fish\\_24sep18\\_e.htm](https://www.wto.org/english/news_e/news18_e/fish_24sep18_e.htm)

<sup>14</sup>Members hold second cluster of meetings in Sept-Dec fisheries subsidies work programme

[https://www.wto.org/english/news\\_e/news18\\_e/fish\\_05nov18\\_e.htm](https://www.wto.org/english/news_e/news18_e/fish_05nov18_e.htm)

Whilst at the last cluster meetings of 2018, on 3 - 7 December, Members discussed the work programme for 2019, and at the 14 December 2018 meeting of the NGR, there were renewed calls to “strengthen commitments to intensify negotiations on fisheries subsidies in the new year to meet the end-2019 target for an agreement. Members called for the shift into full negotiating mode as of January, also noting the urgent deadline for an agreement.

Members also expressed support for the recently-agreed work programme for January - July 2019, which would comprise monthly week-long clusters of meetings. Each cluster would include a mix of member-organized meetings as well as open-ended meetings of the Negotiating Group, which are organized around four main topics: subsidies to IUU fishing; subsidies to fishing where stocks are overfished; subsidies contributing to fleet overcapacity and overfishing; and the cross-cutting issues of special and differential treatment for developing and least-developed members, dispute settlement, institutional issues, and notification and transparency”.<sup>15</sup>

## How are Other International Organisations Addressing These Issues?

As discussions are ongoing on this topic with the view to reach an agreement by 2019, it is pertinent that developing countries and LDCs pay special attention to how other international organisations are presently addressing the cross-cutting issues in the fisheries subsidies

negotiations. Moreover, recent reports of the WTO fisheries negotiations indicate that Members are also discussing the corresponding definitions as they are presented or are utilised in international instruments, other documents of RFMOs/Regional Fisheries Management Arrangements (RFMAs), domestic legislation, as well as other domestic glossaries or manuals, in order to create policy coherence.

Thus, on 25 May 2018, the WTO secretariat prepared a new matrix document, which was essentially created to aid in the comparison between definitions from multiple sources and is to chiefly act as background information.

Hence, although these are not internationally binding nor are there other internationally binding definitions of when a fish stock is overfished<sup>16</sup>, the FAO Fisheries Glossary defines overfished stocks “as stocks exploited beyond an explicit limit beyond which its abundance is considered too low to ensure safe reproduction. While the Organisation for Economic Co-operation and Development (OECD) Glossary of Statistical Terms defines it to be the rate of exploitation where the resource stock is drawn below the size that, on average, would support the long-term maximum potential yield of the fisher”.<sup>17</sup>

On IUU, the matrix defines it according to the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, in accordance with the definitions in the 28 July 2017 matrix. However, an additional accomplishment here has been on the creation of the binding FAO Agreement on

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<sup>15</sup>[https://www.wto.org/english/news\\_e/news18\\_e/fish\\_20dec18\\_e.htm](https://www.wto.org/english/news_e/news18_e/fish_20dec18_e.htm) WTO members voice commitment to intensify fisheries subsidies negotiations in 2019

<sup>16</sup>ICTSD Overfishing, overfished stocks, and the current WTO negotiations on fisheries subsidies

<sup>17</sup>RD/TN/RL/47



Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which came into force on 5 June 2016 and states that “measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States and use all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing, and recognize the need for assistance to developing countries to adopt and implement port State measures”.<sup>18</sup>

On subsidies, although the 2018 matrix does not give a definition, The OECD defines fisheries subsidies as “the financial transfers from governments to the fisheries. The support consists of direct revenue enhancing transfers (direct payments), transfers that reduce the operating costs, and the costs of general services provided to the fishing industry. These general services consist mainly of fishery protection services and fisheries management”.<sup>19</sup>

However, and away from definitions, it is useful to note that the United Nations Conference on Trade and Development (UNCTAD), FAO and the United Nations Environment Program (UNEP) have continued to contribute efforts towards mitigating the issues in the fisheries sector and are prepared to work with countries and donors, in order to offer capacity building and technical assistance on fisheries, trade, environment and development.

Hence, on 17 - 20 July 2016, at the Fourteenth session of UNCTAD (UNCTAD 14) - UNCTAD, FAO and UNEP released a Joint Statement affirming “that regulating fisheries subsidies must be an integral part of the implementation of the 2030 Sustainable Development Agenda<sup>20</sup> and are dedicated to supporting Members in their move to meet Sustainable Development Goal (SDG) 14.6 (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 WTO fisheries subsidies negotiation).

Due to this, they also identified four minimum outcomes that could contribute to members’ efforts to meet target 14.6 by providing accurate, additional, practical and feasible provisions for the transparent notification of all relevant fisheries subsidies; by prohibiting subsidies that contribute to overfishing and overcapacity, and those that undermine sustainable development, food and nutritional security, jeopardizing the livelihoods of coastal populations; by providing adequate and appropriate instruments and tools to deter the introduction of new harmful subsidies and by providing special attention and treatment to developing countries, in particular the least developed ones and Small Island

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<sup>18</sup>FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing  
[http://www.fao.org/fileadmin/user\\_upload/legal/docs/037t-e.pdf](http://www.fao.org/fileadmin/user_upload/legal/docs/037t-e.pdf)

<sup>19</sup>OECD Fisheries support

<https://data.oecd.org/fish/fisheries-support.htm>

<sup>20</sup>UNCTAD-FAO-UNEP Joint Fisheries Subsidies Statement

Development States (SIDS)”<sup>21</sup>

In addition, FAO has furthermore contributed towards international efforts to achieve SDG target 14.6 for instance, by putting together high-level sessions throughout the 2017 Ocean Conference and by organising events such as the Oceans Forum alongside UNCTAD, in order to push forward the trade-related targets of SDG 14 (-to conserve and sustainably use the oceans, seas and marine resources).<sup>22</sup>

However, while the WTO is being looked upon to be the main implementing body towards a future fisheries subsidies Agreement, other organisations are also looking to provide solutions. Thus, on 11th December 2017, at a side event on Fish Trade, Fisheries Subsidies and SDG 14, which was jointly organised by UNCTAD, FAO, UNEP and the Commonwealth at MC11, the Secretary-General of UNCTAD, Mr Mukhisa Kituyi stated that “WTO members have been discussing fisheries subsidies since 2001 as part of the Doha Development Round. [...] should there be no fisheries agreement at MC11, we must find other platforms within the United Nations to continue the discussions to ensure a solution is found by 2020.”<sup>23</sup>

## Conclusion

Accordingly, while there are divergent views in the fisheries subsidies negotiations/proposals, the integral part of the negotiation should be to secure the developmental dimension of LDCs and developing countries. However, tackling the issue through the multilateral arena has proven complicated and is yet to produce any tangible outcomes anywhere.

However, as evidence shows above, while fisheries subsidies negotiations/discussions are primarily ongoing at the WTO. Members are also taking into account the different stances of other international organisations, in order to ensure policy coherence and measures that will support and enhance the future agreement.

Also, as other international organisations such as UNCTAD, FAO, OECD and UNEP are now ready to support Members in achieving policy coherence by providing capacity building and technical assistance.<sup>24</sup> This coupled with the adoption of the work programme for fisheries subsidies negotiations<sup>25</sup>, and with the recommendations above, developing and LDC country Members are now better informed with the objective to conclude the negotiations by 2019, as directed by Ministers at MC11.<sup>26</sup>

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<sup>21</sup>Sustainable Trade in Fisheries - Assisting Member States to Implement Effective, Inclusive and Sustainable Policies  
<https://oceanconference.un.org/commitments/?id=18469>

<sup>22</sup>FAO - The state of the World Fisheries and Aquaculture 2018 <http://www.fao.org/3/i9540en/i9540EN.pdf>

<sup>23</sup>Fisheries subsidies at the Eleventh WTO Ministerial Conference – deal or no deal?

<https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1635>

<sup>24</sup>UNCTAD-FAO-UNEP Joint Statement, p. 2

<sup>25</sup>Fisheries subsidies news archives

[https://www.wto.org/english/news\\_e/archive\\_e/fish\\_arc\\_e.htm](https://www.wto.org/english/news_e/archive_e/fish_arc_e.htm)

<sup>26</sup>Fisheries Subsidies Ministerial Declaration, MC11

## Annex 1: Table of Definitions

New Zealand, Iceland, Pakistan (TN/RL/GEN/186)	EU (TN/RL/GEN/181/Rev.1)	Indonesia (TN/RL/GEN/189/ Rev.1)	ACP Group (TN/RL/GEN/192)	Argentina, Colombia, Costa Rica, Panama, Peru, Uruguay (TN/RL/GEN/187/Rev.2)	LDC Group (TN/RL/GEN/193)
<b>ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING</b>					
<p>"Illegal, unreported and unregulated fishing (IUU)" is to be understood to have the same meaning as paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organisation (FAO)."</p>	<p>"The term IUU fishing stands for "illegal, unreported, and unregulated fishing" as defined in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization (FAO)."</p>	<p>"The term "illegal, unreported, and unregulated fishing" shall be interpreted in accordance with the definition set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization (FAO)."</p>	<p>"IUU 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.</p> <p>Annex I</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>D. Notwithstanding paragraph C, certain unregulated fishing may take place in a manner which is not in violation of applicable international law."</p>	<p>"For the purposes of this instrument, the following definitions shall apply:</p> <p>a. "Illegal, unreported and unregulated fishing" is to be understood to have the same meaning as paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001 IUU Fishing Plan of Action) of the UN Food and Agricultural Organization (FAO), adopted in Rome, 2001."</p>	<p>"For the purpose of this Agreement the term "illegal, unreported and unregulated fishing (IUU)" is to be understood to have the same meaning as paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organization (FAO)."</p>

New Zealand, Iceland, Pakistan (TN/RL/GEN/186)	EU (TN/RL/GEN/181/Rev.1)	Indonesia (TN/RL/GEN/189/Rev.1)	ACP Group (TN/RL/GEN/192)	Argentina, Colombia, Costa Rica, Panama, Peru, Uruguay (TN/RL/GEN/187/Rev.2)	LDC Group (TN/RL/GEN/193)
<b>OVERFISHED/OVERFISHED STOCKS</b>					
"Overfished is where a fish stock is at such a low level that mortality from fishing 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 evidence available. Fish stocks that are recognized as overfished by the national jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation shall also be considered overfished."	"As recognised as overfished by the national authorities of the Party or by the relevant Regional Fisheries Management Organization or Arrangement. In the absence of sufficient data to make such a determination, the stock shall be presumed to be overfished."		"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."		"For the purpose of this Agreement, fish stocks that in an overfished condition are those recognized as such by the national jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organization, based on best scientific evidence available to them."

New Zealand, Iceland, Pakistan (TN/RL/GEN/186)	EU (TN/RL/GEN/181/Rev.1)	Indonesia (TN/RL/GEN/189/Rev.1)	ACP Group (TN/RL/GEN/192)	Argentina, Colombia, Costa Rica, Panama, Peru, Uruguay (TN/RL/GEN/187/Rev.2)	LDC Group (TN/RL/GEN/193)
<b>SUBSIDIES</b>					
Refer to "[partial] subsidies within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement."	"This Agreement applies to subsidies within the meaning of Article 1.1 of the SCM Agreement that are specific in accordance with the provisions of Article 2 of that Agreement. [...] FN1 text–partial]; [...] This Agreement does not apply to [...] fuel de-taxation schemes [...]."	<p>"Article 1 Definition and Coverage</p> <p>1.1 The Discipline provides specific provisions regarding fisheries subsidies and it is an integral part of the Agreement on Subsidies and Countervailing Measures (ASCM).</p> <p>1.2 A subsidy, as used in this Discipline, is a subsidy within the meaning of Paragraph 1 of Article 1 of the ASCM. A subsidy subject to this proposal must be specific, pursuant to Article 2 of the ASCM."</p>	<p>"Article 1 Scope</p> <p>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."</p>	<p>"2.1 [partial] subsidies within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM) that are specific within the meaning of Article 2 of the SCM Agreement."</p>	<p>"Article 1 Scope</p> <p>1.1 This agreement applies to subsidies defined within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures, which are specific in accordance with the provisions of Article 2 of that Agreement, and provided to the fisheries sector."<sup>27</sup></p>

<sup>27</sup>Fisheries Subsidies compilation matrix (TN/RLW/273)



## **CUTS International, Geneva**

CUTS International, Geneva is a non-profit NGO that catalyses the pro-trade, pro-equity voices of the Global South in international trade and development debates in Geneva. We and our sister CUTS organizations in India, Kenya, Zambia, Vietnam, Ghana and Washington have made our footprints in the realm of economic governance across the developing world.

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