

**NEED FOR EFFECTIVE SPECIAL & DIFFERENTIAL TREATMENT
FOR DEVELOPING COUNTRY MEMBERS IN THE PROPOSED
FISHERIES SUBSIDIES TEXT**

Submission by India and Indonesia¹

The following communication, dated 21 April 2008, is being circulated at the request of the Delegations of India and Indonesia.

I. INTRODUCTION

Paragraph 28 of the Doha Ministerial Declaration provides the mandate for negotiations in the area of fisheries subsidies, which *inter alia* provides that participants shall aim to clarify and improve WTO disciplines on fisheries subsidies. The Declaration² adopted at the Hong Kong Ministerial Conference in December 2005 reaffirmed the Doha mandate and provides further guidance for negotiations in its Annex D, which specifically emphasizes that appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to poverty reduction and livelihood and food security concerns.

The Chair's draft text on Rules (TN/RL/W/213) has added an Annex VIII on Fisheries subsidies to the Agreement on Subsidies and Countervailing Measures, which has been intensively discussed from December 2007 to March 2008. Many developing countries have made known their strong concerns on the draft text particularly on the provisions relating to grant of Special & Differential (S&D) Treatment to developing country Members and the conditionalities of fisheries management prescribed to avail the S&D treatment.

In this paper, we make a strong case for effective S&D provisions in the Chair's text. In Section II, we give a brief background of the nature of the marine fisheries in most developing countries. In Section III, we analyze the text and explain why developing countries would have a problem in accepting the S&D provisions in their current form. In Section IV, we provide a similar rationale for the difficulty in accepting Article V on Fisheries Management. In Sections V and VI, we give our position on the Notification and Surveillance requirements (Article VI) and Transitional Provisions (Article VII). We offer concluding remarks in Section VII. Finally, we have provided an Annexure, where amendments to the Chair's text on Fisheries Subsidies have been suggested.

II. BACKGROUND ON FISHERIES IN DEVELOPING COUNTRIES

¹ This is without prejudice to India's or Indonesia's position on these issues. It is also without prejudice to additional views or any future submissions by India or Indonesia on this or other aspects of S & DT for fisheries subsidies in any new disciplines.

² WT/MIN(05)/DEC, 22 December 2005.

Most developing countries have large sections of their population involved in fisheries. More often than not, fishing is a means of livelihood in such countries, as opposed to its pre-dominantly commercial nature in developed countries. Further, the fisheries sector is characterized by unpredictability and seasonality of catch, where prices obtained for catch on any given day can be highly uncertain. Available evidence also suggests that coastal fishing communities, in general, have lower levels of literacy, a lower sex ratio, and poorer conditions of housing, as compared to national averages.³ Evidence also suggests that fishing communities are faced with a deteriorating quality of life as a result of pollution, sea erosion, increased pressure on coastal lands, degradation of the coastal environment and displacement.

In addition, the technology used for fishing in developing countries is also very basic, with large sections of the fishing community using unpowered boats or at best, vessels with minimal motorization (up to 10 Horse Power outboard motors). For example, 44 per cent of the fishing vessels in India are unpowered, but contribute to less than 10 per cent of the marine fish production. If the small motorized vessels (up to 10HP motors) are also taken into account, these, together with the unpowered vessels account for about 75 per cent of the vessels and 50 per cent of the fish production. Most of these vessels are up to 20m length overall. Similarly, in Indonesia, 85 per cent of fishing vessels are small and traditional, operating mostly in the territorial waters. There are about 9,337 unpowered vessels and 77,339 small motorized vessels, which form this small and traditional fleet. Most of these vessels are also about 20m in length.

The fishing infrastructure in most developing countries is under-developed and in need of large doses of state intervention. For example, India has a long coastline of 8,118 sq. km and an Exclusive Economic Zone of 2 million sq. km. However, there are only 6 major and 41 minor fishing harbours and 2,000 landing sites. Most of the landing sites are rudimentary and in need of maintenance and repair. Clearly, there is a need to build more fishing harbours and landing sites.

It is therefore clear that developing countries need to protect the livelihood concerns of their poor fishermen and also take up major infrastructure development. Further, given the public good nature of the infrastructure and the involvement of huge investments with long gestation lags, it is clear that the State would have to continue to support such activities. Some of the possible marine fishery policies that developing countries need to develop or are already implementing could be *inter alia*:

1. Mechanization of country craft and introduction of new mechanized boats
2. Taking up repair and maintenance of existing harbors and landing sites and beginning Greenfield projects for new harbours and landing sites. Overall technological upgradation in the fishery sector.
3. Provision of training facilities.
4. Support to small and artisanal fishermen through providing income support, fishing equipment and tax waiver on fuel.
5. Developing efficient mechanisms to preserve and market the catch.

³ Rural Poverty among Coastal Fishers in India: Profile and Possible Interventions. Publication of International Fund for Agriculture (IFAD). October 2003.

6. Putting in place effective management techniques on stock assessment of various species, using remote sensing to help such assessment, development and conservation of fish stock, electronic tracking of vessels etc.

The rationale for the above steps is quite clear. Small country craft do not operate beyond a few miles from the shore and spend much of their time in going to and from the fishing grounds. Consequently production per unit of effort is low. Basic mechanization of fishing operations (for example, fitting of inboard or outboard motors of about 10 Horse Power) would enable the fishermen to reach deeper into the territorial waters or into areas in the EEZ contiguous to territorial waters and also to fish for longer hours, thereby enabling them to get out of the vicious cycle of poverty.

Given the above, it is evident that the Chair's text on fisheries subsidies will not only restrict the efforts of developing countries at formulating and implementing public policies to address livelihood concerns of poor fishermen, it will also hinder their efforts at building infrastructure. Moreover, it seems to be unfair to restrict the very subsidies that developed countries have historically given to their small and artisanal fishermen and for developing their infrastructure.⁴

Having analyzed the state of fisheries in many developing countries, it may also be kept in mind that most developing countries are Members of the FAO, where they have subscribed to the various agreements such as the UN Fish Stocks Agreement (FSA) and the Code of Conduct for Responsible Fisheries (CCRF). They also have fisheries management systems in place or are in the process of devising and operationalizing such systems.⁵ However, the FAO agreements are voluntary in nature, which gives developing countries the necessary comfort and flexibility. Hence, committing to these systems irreversibly at the WTO is not only undesirable, but would also expose developing country regimes to being challenged through the dispute settlement mechanism.

III. WHY THE CHAIR'S TEXT MILITATES AGAINST DEVELOPING COUNTRY INTERESTS

The Chair's text is basically a bottom-up approach and is organized as follows: Article I lays out the subsidies that are prohibited, Articles II and III are exceptions to the prohibition, Article IV deals with adverse effects, Article V lists the components of a Fisheries Management system, Article VI deals with Notification issues, Article VII addressed the final and provisional measures and

⁴ Even a demandeur for disciplines on fisheries subsidies such as Norway had a large subsidies programme until the 1980s to protect their small and artisanal fishermen. Another demandeur, namely the United States continue to give fuel subsidies to fisheries to this date. According to the 2000 APEC study on fisheries subsidies, the United States extends 'diesel and gasoline excise tax exemption' to the fisheries sector since 1951. As per the U.S. Notification to the WTO (WT/CTE/W/80/Add.1, dated 21 September 1999), quoted in the APEC study, the United States had forgone US\$150 million per year in uncollected excise taxes on account of this scheme. The programme treats "fishermen comparably to farmers in the provisions of a partial exemption from the motor fuel excise tax for fuel consumed in the course of business". Its objective is to "exempt non-highway users of diesel and gasoline from federal excise taxes".

⁵ For example, in India, responsibility for fisheries is spread over several agencies and Ministries at the Central and State levels. While the Central government is responsible for fisheries in the exclusive economic zone (EEZ)—marine space beyond the territorial sea up to 200 nautical miles from the baseline—the responsibility for fisheries in the territorial waters—the marine space up to 12 nautical miles (22 km) from the baseline—rests with the State governments. At the national level, the basic fisheries legislation is the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981. Fisheries within the 12-mile territorial limits are managed under the Marine Fishing Regulation Acts (MFRAs) of the coastal States, which regulate fishing vessels in the 12-mile territorial sea mainly to protect the interests of fishermen on board traditional fishing vessels. These MFRAs are basically the fisheries management systems, some of which need to be further fine tuned and need time to stabilize.

Article VIII deals with dispute settlement issues. Out of these, the core concerns of developing countries are Articles I, II, III and V. Let us see why.

III.1 Proposed Prohibited Subsidies (Article I)

In general, any subsidy, except in the case of least-developed countries (LDCs), the benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are in an "unequivocally overfished condition" is proposed to be prohibited. This includes subsidies to fishing activities in the territorial sea, EEZ and the high seas. The legal/biological implications of "unequivocally overfished condition" need to be clarified. Unlike in the case of temperate waters, it can be argued that fish stocks in an "unequivocally overfished condition" may not exist in tropical waters. **We therefore suggest that the text be amended to reflect the situation in tropical fisheries.**

III.2 General Exceptions (Article II)

Article II has listed general exceptions to the prohibition and these apply to both, developing and developed Members. These subsidies are proposed not to be prohibited for both developed and developing countries subject to the requirements of a comprehensive fisheries management system as listed in Article V. Further, these subsidies can contribute to better fisheries management, to greater protection of the environment, to greater safety of fishing operations, and to better welfare of fishers and fishing communities. In general, we have no opposition, in principle to the objective of environmental protection and conservation. However, a careful reading of the list above shows that most of the subsidies are likely to be granted in developed countries, rather than in developing countries, which are yet to build their fleets or develop their infrastructure. Issues such as vessel or crew safety, early retirement, retraining or selective fishing techniques are predominantly associated with conditions of fishing in developed countries.

III.3 Special and Differential Treatment of Developing Country Members (Article III)

The S&D treatment and its implications for developing countries are analyzed below. One thing that must be noted here is that the exemption from prohibited subsidies is available to developing countries only if they have an operational fisheries management system as prescribed in Article V.

III.3.1 Inshore fishing vessels [III.2(a)]

The prohibited subsidies under Article I are proposed not to be prohibited for vessels engaging in fishing activities in inshore waters (which in this instance refer to the territorial waters - up to 12 nautical miles from the shore where the sovereignty of the coastal State applies). There is a requirement to manage fisheries to ensure sustainability and a reference has also been made to the fisheries management measures referred to in Article V. However, the following conditions have to be met for the non-prohibition:

- Fishing should employ non-mechanized net-retrieval;
- Fishing activities should be carried out on their own by fishworkers;
- The catch should be consumed principally by fishworkers and their families;
- The activities should not go beyond a small profit trade;

- There should be no major employer-employee relationship in the activities carried out.

It will be clear from the above description of fisheries in developing countries that some of these conditions such as 'small profit trade' are not clearly defined. Others such as 'non-mechanized net retrieval', 'employer-employee relationship' and 'catch principally for self-consumption' will be difficult to meet. Some of the boats can have basic mechanization for net-retrieval, particularly where the boats occasionally enter the EEZ after 2-3 miles off the coast. Similarly, in many cases fishing operations are performed on employer-employee relationship basis. Elsewhere, there are a number of operations where fishermen have come together in small groups or formed a cooperative and financed the boat by pooling their savings and/or taking a loan. Finally, the catch is rarely for self-consumption. Indeed, since this is their livelihood, the catch is principally for selling in the market so that the fishermen can run their homes and send their children to schools. **We would therefore like the conditions to be dropped and the reference to Article V should also be deleted.**

III.3.2 Capital Subsidies for infrastructure development, income support and price support (Article III.2(b)(1))

Capital subsidies for port infrastructure, fish landing, storage or fish processing facilities; income support for fishers or fishing companies; and price support for fish from marine wild capture fishing are proposed not to be prohibited for developing countries subject to the operation of a fisheries management system as described in Article V.

As described above, developing countries are at various stages of developing their infrastructures and need the flexibility to pursue their development goals. Making the exception to the prohibition conditional on having a fisheries management system will restrict the policy space of developing countries. Indeed, as we have argued above, developed countries have already provided these very subsidies historically to develop their fisheries sector, which in turn has landed us in the current situation of overfished waters. Why then, should developing countries pay this 'management' tax without at least developing their fisheries sector? **We would therefore like conditionality of Article V to be dropped.**

III.3.3 Decked vessels up to 10 m or 34 ft in length, or undecked vessels of any length [III.(2)(b)(2)]

There are broadly three types of subsidies that are proposed to be permitted in this sub-section: (a) Capital subsidies for acquiring, constructing, repairing, renewing, renovating, modernizing or modifying fishing or service vessels; (b) operating costs subsidies, including license fees, fuel, ice, bait, personnel, social charges, insurance, gear and at-sea support of fishing or service vessels; (c) subsidies to post-harvest activities such as landing, handling or processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels and activities.

As is evident from the discussion in Section II and Section III.3.1 above, the restriction of 10m would render most motorized vessels and many unpowered vessels ineligible to benefit from this exemption. **We would therefore like the length of the decked vessels be raised to 24m and conditionality of Article V to be dropped.**

III.3.4 Larger decked vessels [III.(2)(b)(3)]

This sub-section permits capital subsidies for acquiring, constructing, repairing, renewing, renovating, modernizing or modifying fishing or service vessels (I.1 (a)) for other types of vessels, possibly larger ones, provided that such vessels would be used exclusively for identified target stocks within their EEZ, where these stocks have been subject to prior scientific stock assessment, conducted

in accordance with relevant international standards, and where the assessment has been subject to peer review in the relevant body of the FAO. **If the length of the vessel is raised to 24m as discussed above, we have no objection to this provision except that peer review provision should be dropped.**

III.3.5 Permission for subsidies for access rights in another developing country:

Subsidies to the fishing industry of a Member to access fisheries resources under the jurisdiction of another developing country Member (III.3) are proposed to be permitted as long as the acquired fishing rights are made public, and contain provisions to prevent overfishing based on UN Fish Stocks Agreement, CCRF and the Compliance Agreement, and science-based stock assessment, regular assessment for management and control measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the coastal State and to relevant international organizations.

This is a provision that puts a number of developing countries in a dilemma. On the one hand is the dependence of a number of countries on the revenues generated by access payments received mostly from developed countries. On the other hand, developed countries would be permitted to subsidize their fishing fleets to fish in the waters of developing countries. This will basically allow developed countries to continue subsidizing most of their fishing activities. This is because developed countries have created the present situation of overfished waters in their EEZ and have fanned out to look for fish stock in the EEZ of developing countries. **Given the importance of access fees to developing countries, we have no objection to the current text in Article III.3. However, it must be explicitly mentioned that even developing countries have the right to access the waters of other developing countries.**

III.3.6 Fishing in International Waters:

We note that there is no explicit provision for any disciplines on fishing in the high seas or international waters. We understand these waters to mean those beyond the EEZ. Available evidence suggests that large scale fishing in international waters is carried out in an unsustainable manner, which has led to overfished waters in the major oceans and seas. Not only that, the adjoining EEZ is also adversely affected. **We therefore suggest that there be an explicit mention of a notification requirement by those fishing in international waters.**

IV. FISHERIES MANAGEMENT (ARTICLE V)

For granting or maintaining any subsidy, the operation of a fisheries management system designed to regulate marine capture fishing is proposed either at the national or regional level. It is proposed to be based on internationally-recognized best practices for fisheries conservation and management. These practices include UN Fish Stocks Agreement, FAO Code of Conduct for Responsible Fisheries, FAO Compliance Agreement, various FAO technical guidelines and plans of action, science-based stock assessment (which is proposed to be peer reviewed by FAO or its regional bodies), and capacity and effort management measures. It is further proposed that it would be desirable to have fisheries management systems based on limited access privileges such as community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quota (ITQ) systems. It is also proposed that an enquiry point to answer all reasonable enquiries about the fisheries management system shall be in place. Such an enquiry point would also provide information on measures in place to address fishing capacity and fishing effort and the biological status of the fisheries in question.

Most developing countries have ratified the UN Fish Stocks Agreement and have adopted the 1995 FAO Code of Conduct for Responsible Fisheries and have embraced international best practices,

in principle. Many developing countries, including India already have a science-based stock assessment system. They also have capacity (fleet rationalization) and effort management measures under implementation (mesh size regulations, closed areas, closed seasons, restriction on fishing gear, prohibition of destructive fishing methods, prevention of incidental take of turtles, etc). Various measures such as resource-specific fleet development programme (e.g. to harvest the estimated tuna potential) are expected to match fishing capacity with potential fisheries resources. However, there are a number of measures that are yet to be adopted. Moreover, many of the measures are yet to be included in domestic legislation⁶. **We therefore propose that developing countries be given the flexibility to adopt the measures proposed in Article V and undertake domestic legislation at their own pace.**

V. NOTIFICATION AND SURVEILLANCE (ARTICLE VI)

There are detailed notification and disclosure requirements for subsidies that are not prohibited. There is also a requirement of advance notification of any measure invoking Article II (General Exceptions) and Article III (S&D measures). If a subsidy is not notified that subsidy would be presumed to be prohibited and the subsidizing Member would have to demonstrate that the subsidy in question is not prohibited. In the event of a dispute, the panel would seek advice from fisheries experts chosen by the panel in consultation with the parties. The panel may also establish an advisory technical fisheries expert group or consult recognized and competent international organizations.

While we welcome the notification and surveillance requirements, we feel that non-notification need not be equated to a presumption of prohibition since non-notification could occur because of a number of administrative reasons (**Article VIII.2 Dispute Settlement**). Further, the requirement of advance notification will also be difficult to implement. **We therefore suggest that aforementioned presumption and the advance notification requirement be dropped.**

VI. TRANSITIONAL PROVISIONS

Article VII requires that a subsidy programme which has been established before the date of entry into force of the results of the Doha Round and which is inconsistent with the Agreement on Subsidies and Countervailing Measures (Article 3.1(c) and Article I) has to be notified to the Committee 90 days after the date of entry into force of these results (180 days for developing countries). Further, these programmes have to be brought into conformity with the ASCM 2 years from the date of entry into force of the results of the DDA (4 years for developing countries). **While transitional provisions are acceptable, we suggest that the period given for conformity for developing countries should be raised from 4 to 10 years.**

VII. CONCLUSION

To summarize, a three tier S&D provision has been proposed in Annex VIII. Except for the proposed prohibited subsidies on transfer of fishing or service vessels to third countries [I (b)] and subsidies conferred on any vessel engaged in IUU fishing [I (h)] all subsidies that are proposed to be prohibited are brought under S&D treatment for developing countries, subject to Article V.

The implication of the above S&D regime is that even if a developing country Member subscribes to a fisheries management system, only three categories of fishing vessels can benefit from S&D provisions: inshore fishing vessels (mainly confined to territorial waters); decked vessels not greater than 10 m or 34 ft in length overall or undecked vessels of any length; and fishing vessels that are used exclusively for specific target stocks within their EEZs. We have demonstrated above why

⁶ For example India is yet to adopt and implement a comprehensive legislation to manage its EEZ fisheries (it already has a comprehensive legislation to deal with foreign fishing in the Indian EEZ).

the S&D provisions will be difficult to invoke if the present text is accepted. We have also suggested amendments that will make the S&D provisions effective.

In the light of the above, and given the development priorities, food security and livelihood concerns of developing countries, we believe that effective special & differential treatment for small scale, artisanal fisheries in the new disciplines is essential. We recognize and share the objective of the importance of management of fishery resources towards sustainable fisheries and have undertaken resource management measures, including closed season fishing, regulation of mesh size, earmarking areas for fishing vessel. Most developing countries are a signatory to UNCLOS and have also adopted various provisions of the FAO Code of Conduct for Responsible Fisheries even though the Code is voluntary. Further, institutional and legal mechanisms for management of fisheries are in place, which are also being constantly improved and upgraded. Prevention of IUU fishing, Management of fishing capacity, promotion of sustainability concept in fishing operations and checking over fishing are the main management objectives in the marine sector. We are willing to engage actively on this subject as on range of other issues impinging upon the nature and structure of any new disciplines in fisheries sector, special and differential treatment for developing countries, in accordance with the Doha mandate as elaborated in Hong Kong Ministerial Declaration.

Annexure

(Alternate text proposed by India and Indonesia)
Additions are in bold letters and deletions are in strikethrough

Article I

Prohibition of Certain Fisheries Subsidies

I.1 Except as provided for in Articles II and III, or in the exceptional case of natural disaster relief⁷, the following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, shall be prohibited:

- (a) Subsidies the benefits of which are conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels⁸ or service vessels⁹, including subsidies to boat building or shipbuilding facilities for these purposes.
- (b) Subsidies the benefits of which are conferred on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners.
- (c) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities.
- (d) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities).
- (e) Income support for natural or legal persons engaged in marine wild capture fishing.
- (f) Price support for products of marine wild capture fishing.

⁷ Subsidies referred to in this provision shall not be prohibited when limited to the relief of a particular natural disaster, provided that the subsidies are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery, and/or the affected fleet to its pre-disaster state, up to a sustainable level of fishing capacity as established through a science-based assessment of the post-disaster status of the fishery. Any such subsidies are subject to the provisions of Article VI.

⁸ For the purposes of this Agreement, the term "fishing vessels" refers to vessels used for marine wild capture fishing and/or on-board processing of the products thereof.

⁹ For the purposes of this Agreement, the term "service vessels" refers to vessels used to tranship the products of marine wild capture fishing from fishing vessels to on-shore facilities; and vessels used for at-sea refuelling, provisioning and other servicing of fishing vessels.

(g) Subsidies arising from the further transfer, by a payer Member government, of access rights that it has acquired from another Member government to fisheries within the jurisdiction of such other Member.¹⁰

(h) Subsidies the benefits of which are conferred on any vessel engaged in illegal, unreported or unregulated fishing.¹¹

I.2 In addition to the prohibitions listed in paragraph 1, any subsidy referred to in paragraphs 1 and 2 of Article 1 the benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are **declared to be** in an over fished condition shall be prohibited.

Article II

General Exceptions

Notwithstanding the provisions of Article I, and subject to the provision of Article V:

(a) For the purposes of Article I.1(a), subsidies exclusively for improving fishing or service vessel and crew safety shall not be prohibited, provided that:

(1) such subsidies do not involve new vessel construction or vessel acquisition;

(2) such subsidies do not give rise to any increase in marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn; and

(3) the improvements are undertaken to comply with safety standards.

(b) For the purposes of Articles I.1(a) and I.1(c) the following subsidies shall not be prohibited:

subsidies exclusively for: (1) the adoption of gear for selective fishing techniques; (2) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing; (3) compliance with fisheries management regimes aimed at sustainable use and conservation (e.g., devices for Vessel Monitoring Systems); provided that the subsidies do not give rise to any increase in the marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn.

(c) For the purposes of Article I.1(c), subsidies to cover personnel costs shall not be interpreted as including:

¹⁰ Government-to-government payments for access to marine fisheries shall not be deemed to be subsidies within the meaning of this Agreement.

¹¹ The terms "illegal fishing", "unreported fishing" and "unregulated fishing" shall have the same meaning as 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.

- (1) subsidies exclusively for re-education, retraining or redeployment of fishworkers¹² into occupations unrelated to marine wild capture fishing or directly associated activities; and
- (2) subsidies exclusively for early retirement or permanent cessation of employment of fishworkers as a result of government policies to reduce marine wild capture fishing capacity or effort.
- (d) Nothing in Article I shall prevent subsidies for vessel decommissioning or capacity reduction programmes, provided that:
- (1) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;
- (2) the fish harvesting rights associated with such vessels, whether they are permits, licences, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned;
- (3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and
- (4) the fisheries management system in place includes management control measures and enforcement mechanisms designed to prevent overfishing in the targeted fishery. Such fishery-specific measures may include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, such as individual transferable quotas.
- (e) Nothing in Article I shall prevent governments from making user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes.

Article III

Special and Differential Treatment of Developing Country Members

III.1 The prohibition of Article 3.1(c) and Article I shall not apply to least-developed country ("LDC") Members.

III.2 For developing country Members other than LDC Members:

- (a) Subsidies referred to in Article I.1 shall not be prohibited where they relate exclusively to marine wild capture fishing performed ~~on an inshore basis (i.e., within the territorial waters of the Member)~~ with ~~non-mechanized net retrieval, provided that (1) the activities are carried out on their own behalf by fishworkers, on an individual basis which may include family members, or organized in associations; (2) the catch is consumed principally by the fishworkers and their families and the~~

¹² For the purpose of this Agreement, the term "fishworker" shall refer to an individual employed engaged in marine wild capture fishing and/or directly associated activities.

~~activities do not go beyond a small profit trade; and (3) there is no major employer-employee relationship in the activities carried out. Fisheries management measures aimed at ensuring sustainability, such as the measures referred to in Article V, should be implemented in respect of the fisheries in question, adapted as necessary to the particular situation, including by making use of indigenous fisheries management institutions and measures, without deploying any of the internationally recognized destructive fishing methods, provided that the activities are carried out by fish workers, on an individual basis or organized in associations or on employment basis.~~

It is desirable that adequate measures for ensuring sustainability and to prevent environment degradation are adapted as necessary to the particular situation, by making use of indigenous fisheries management institutions and measures.

(b) ~~In addition, subject to the provisions of Article V:~~

(1) ~~Subsidies referred to in Articles I.1(d), I.1(e) and I.1(f) shall not be prohibited.-~~

(2) ~~Subsidies referred to in Article I.1(a) and I.1 (c), shall not be prohibited provided that: they are used exclusively for marine wild capture fishing employing decked vessels not greater than 10 meters or 34 feet in length overall, or undecked vessels of any length.~~

(i) they are used exclusively for marine wild capture fishing employing decked vessels not greater than 24 meters or 82 feet in length overall, or undecked vessels of any length; and

(ii) adequate measures for ensuring sustainability and to prevent environment degradation are adapted as necessary to the particular situation, by making use of indigenous fisheries management institutions and measures.

(3) ~~For fishing and service vessels of such Members other than the vessels referred to in paragraph (b) (2), subsidies referred to in Article I.1(a) shall not be prohibited provided that (i) the vessels are used exclusively for marine wild capture fishing activities of such Members in respect of particular, identified target stocks within their Exclusive Economic Zones ("EEZ"), and (ii) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level. and (iii) that assessment has been subject to peer review in the relevant body of the United Nations Food and Agriculture Organization ("FAO")¹³;~~

III.3 Subsidies referred to in Article I.1(g) shall not be prohibited where the fishery in question is within the EEZ of a developing country Member, provided that the agreement pursuant to which the rights have been acquired is made public; (i) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level; (ii) that assessment has been subject to peer review in the relevant body of the United Nations Food and Agriculture

¹³ If the Member in question is not a member of the FAO, the peer review shall take place in another recognized and competent international organization.

Organization ("FAO")¹⁴ (iii) the agreement pursuant to which the rights have been acquired is made public, and (iv) contains provisions designed to prevent overfishing in the area covered by the agreement based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species, such as, *inter alia*, the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("Fish Stocks Agreement")*, the *Code of Conduct on Responsible Fisheries of the Food and Agriculture Organization ("Code of Conduct")*, the *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas ("Compliance Agreement")*, and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. These provisions shall include requirements and support for science-based stock assessment before fishing is undertaken pursuant to the agreement and for regular assessments thereafter, for management and control measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the host Member and to relevant international organizations, and for such other measures as may be appropriate.

III.4 Every Member deploying fishing vessels in the international waters shall notify to the Committee and relevant international and regional fishery organisations the type and dimensions of the fishing vessels or service vessels being deployed, the quantity of catch removed and the measures adopted to ensure that the removal of fish from areas adjoining the EEZ boundary of any member shall not adversely impact the fishery within the adjoining EEZ of the other member (s).

III.5 Members shall give due regard to the needs of developing country Members in complying with the requirements of this Annex, including the conditions and criteria set forth in this Article and in Article V, and shall establish mechanisms for, and facilitate, the provision of technical assistance in this regard, bilaterally and/or through the appropriate international organizations.

Article IV

General Discipline on the Use of Subsidies

IV.1 No Member shall cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, depletion of or harm to, or creation of overcapacity in respect of, (a) straddling or highly migratory fish stocks whose range extends into the EEZ of another Member. or (b) stocks in which another Member has identifiable fishing interests, including through user specific quota allocations to individuals and groups under limited access privileges and other exclusive quota programmes. The existence of such situations shall be determined taking into account available pertinent information, including from other relevant international organizations. Such information shall include the status of the subsidizing Member's implementation of internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at the sustainable use and conservation of marine species, such as, *inter alia*, the *Fish Stocks Agreement*, the *Code of Conduct*, the *Compliance Agreement*, and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.

¹⁴ If the Member in question is not a member of the FAO, the peer review shall take place in another recognized and competent international organization.

IV.2 Any subsidy referred to in this Annex shall be attributable to the Member conferring it, regardless of the flag(s) of the vessel(s) involved or the application of rules of origin to the fish involved.

Article V

Fisheries Management¹⁵

V.1 Any Member granting or maintaining any subsidy as referred to in Article II ~~or Article III.2(b)~~ shall operate a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent overfishing. Such management system ~~shall~~ **could** be based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species, ~~such as, inter alia, the Fish Stocks Agreement, the Code of Conduct, the Compliance Agreement, technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.~~ The system shall include regular science-based stock assessment, as well as capacity and effort management measures, including harvesting licences or fees; vessel registries; establishment and allocation of fishing rights, or allocation of exclusive quotas ~~to vessels, individuals and/or groups, and related enforcement mechanisms;~~ species specific quotas, seasons and other stock management measures; vessel monitoring which could include electronic tracking and on-board observers; systems for reporting in a timely and reliable manner to the competent national authorities ~~and relevant international organizations~~ data on effort, catch and discards in sufficient detail to allow sound analysis; and research and other measures related to conservation and stock maintenance and replenishment. To this end, the Member shall adopt and implement pertinent domestic legislation and administrative or judicial enforcement mechanisms. It is desirable that such fisheries management systems be based on limited access privileges^{16, 17}. ~~Information as to the nature and operation of these systems, including the results of the stock assessments performed, shall be notified to the relevant body of the FAO, where it shall be subject to peer review prior to the granting of the subsidy¹⁸.~~ References for such legislation and mechanism, including for any modifications thereto, shall be notified to the Committee on Subsidies and Countervailing Measures ("the Committee") pursuant to the provisions of Article VI.4.

V.2 Each Member shall maintain an enquiry point to answer all reasonable enquiries from other Members and from interested parties in other Members concerning its fisheries management system, including measures in place to address fishing capacity and fishing effort, and the biological status of the fisheries in question. Each Member shall notify to the Committee contact information for this enquiry point.

¹⁵ Developing country Members shall be free to implement and operate these management requirements on a regional rather than a national basis provided that all of the requirements are fulfilled in respect of and by each Member in the region.

¹⁶ Limited access privileges could include, as appropriate to a given fishery, community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quotas.

¹⁷ Limited access privileges could include, as appropriate to a given fishery, community-based rights systems, spatial or territorial rights systems, or individual quota systems, including individual transferable quotas.

¹⁸ If the Member in question is not a member of the FAO, the notification for peer review shall be to another relevant international organization. The specific information to be notified shall be determined by the relevant body of the FAO or such other organization.

Article VI

Notifications and Surveillance

VI.1 Each Member shall, ~~notify to the Committee in advance of its implementation any measure for which that Member invokes~~ and developing country Members shall, to the extent possible, notify to the Committee prior to invoking any of the provisions of Article II or Article III.2; except that any subsidy for natural disaster relief¹⁹ shall be notified to the Committee without delay²⁰. In addition to the information notified pursuant to Article 25, any such notification shall contain sufficiently precise information to enable other Members to evaluate comment upon whether or not the conditions and criteria in the applicable provisions of Article II or Article III.2 are met.

VI.2 Each Member that is party to an agreement pursuant to which fishing rights are acquired by a Member government ("payer Member") from another Member government to fisheries within the jurisdiction of such other Member shall publish that agreement, and shall notify to the Committee the publication references for it.

VI.3 The terms on which a payer Member transfers fishing rights it has obtained pursuant to an agreement as referred to in paragraph 2 shall be notified to the Committee by the payer Member in respect of each such agreement.

VI.4 Each Member shall include in its notifications to the Committee the references for its applicable domestic legislation and for its notifications made to other organizations, as well as for the documents related to the reviews conducted by those organizations, as referred to in Article V.1.

VI.5 Other Members shall have the right to request information about the notified subsidies, ~~including about individual cases of subsidization,~~ about notified agreements pursuant to which fishing rights are acquired, and about the stock assessments and management systems notified ~~to other organizations~~ pursuant to Article V.1. Each Member so requested shall provide such information in accordance with the provisions of Article 25.9.

VI.6 Any Member shall be free to bring to the attention of the Committee information ~~from pertinent outside sources (including intergovernmental organizations with fisheries management-related activities, regional fisheries management organizations and similar sources)~~ as to ~~on~~ any apparent illegal, unreported and unregulated fishing activities.

VI.7 Measures notified pursuant to this Article shall be subject to review by the Committee as provided for in Article 26.

Article VII

Transitional Provisions

VII.1 Any subsidy programme which has been established within the territory of any Member before the date of entry into force of the results of the DDA and which is inconsistent with Article 3.1(c) and Article I shall be notified to the Committee not later than 90 days, or in the case of a developing country Member 180 days, after the date of entry into force of the results of the DDA.

¹⁹ As provided for in Article I.1 and footnote 77.

²⁰ For the purposes of this provision, "without delay" shall mean not later than the date of entry into force of the programme, or in the case of an ad hoc subsidy, the date of commitment of the subsidy.

VII.2 Provided that a programme has been notified pursuant to paragraph 1, a Member shall have two years, or in the case of a developing country Member ~~four~~ ten years, from the date of entry into force of the results of the DDA to bring that programme into conformity with Article 3.1(c) and Article I, during which period the programme shall not be subject to those provisions.

VII.3 No Member shall extend the scope of any programme, nor shall a programme be renewed upon its expiry.

Article VIII

Dispute Settlement

VIII.1 Where a measure is the subject of dispute settlement claims pursuant to Article 3.1(c) and Article I, the relevant provisions of Article 4 and of this Article shall apply. Article 30 and the relevant provisions of this Article shall apply to disputes arising under other provisions of this Annex.

~~VIII.2 Where a subsidy that has not been notified as required by Article VI.1 is the subject of dispute settlement pursuant to the DSU and Article 4, such subsidy shall be presumed to be prohibited pursuant to Article 3.1(c) and Article I. It shall be for the subsidizing Member to demonstrate that the subsidy in question is not prohibited.~~

VIII.3 2 Where a further transfer of access rights as referred to in Article I.1(g) is the subject of a dispute arising under this Annex, and the terms of that transfer have not been notified as required by Article VI.3, the transfer shall be presumed to give rise to a subsidy. It shall be for the payer Member to demonstrate that no such subsidy has arisen.

VIII.4-3 Where a dispute arising under this Annex raises scientific or technical questions related to fisheries, the panel should seek advice from fisheries experts chosen by the panel in consultation with the parties. To this end, the panel may, when it deems it appropriate, establish an advisory technical fisheries expert group, or consult recognized and competent international organizations, at the request of either party to the dispute or on its own initiative.

VIII.5 4 Nothing in this Annex shall impair the rights of Members to resort to the good offices or dispute settlement mechanisms of other international organizations or under other international agreements.
