



# THE LOW HANGING FISH

A REVIEW OF THE SEVEN WTO PROPOSALS  
ADDRESSING HARMFUL FISHERIES SUBSIDIES

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BY BLOOM AND THE VARDA GROUP

**Definition: Low Hanging Fish** – like in Low Hanging Fruit: a course of action that can be undertaken quickly and easily as part of a wider range of changes or solutions to a problem. (Collins English Dictionary)



the VARDA GROUP

# NOW IS THE TIME TO CURB OVERFISHING!

*The 11th Ministerial Conference of the WTO (MC11) will be held 10-13 December 2017 in Buenos Aires<sup>1</sup>. The WTO has been trying to reach an agreement on the elimination of harmful fisheries subsidies for almost two decades<sup>2</sup>.*

## Now is the time to curb overfishing!

In its Annual Report 2017<sup>3</sup>, the World Trade Organization (WTO) reports that “fisheries subsidies dominated work in the Negotiating Group on Rules during 2016 [...] many WTO members saw an outcome on fisheries subsidies as a ‘critical area for action’ for the WTO’s 11th Ministerial Conference (MC11) in Buenos Aires in December 2017”.<sup>4</sup> Thus WTO negotiators in Geneva have hopes that the impasse could be resolved this year in Buenos Aires, prompted by the commitment expressed in the UN Sustainable Development Goal #14, the “Ocean SDG”, to eliminate harmful fisheries subsidies by 2020.<sup>5</sup> This commitment and the role of the WTO to achieve it were reiterated in June 2017 at the UN Ocean Conference held in New York and it has been referenced in all proposals submitted by WTO members in negotiations currently held in view of MC11.<sup>6</sup> With the Ministerial Conference fast approaching, an agreement on the elimination of harmful fisheries subsidies has now become the “low hanging fish” at the Buenos Aires WTO conference.

BLOOM and the Varda Group urge all WTO members to reach in the next three months, on time for the Buenos Aires conference, a strong agreement that will provide the framework to eliminate harmful fisheries subsidies by the year 2020.

**The ocean and fishers whose livelihoods depend on a healthy and productive ocean cannot wait further for strong collective action that will put a halt to the ongoing destruction of jobs and natural resources.**

## Seven proposals to end harmful subsidies

During the summer 2017, the Chair of the WTO Negotiating Group on Rules circulated a compilation of seven fisheries subsidies proposals, which were tabled by WTO Members and illustrate the growing expectation for a WTO decision on this important issue.<sup>7</sup>

By July 2017, a total of seven proposals on fisheries subsidies had been submitted:

- ❶ a revised proposal from the EU,
- ❷ a revised proposal from Indonesia,
- ❸ a new proposal from Norway,
- ❹ a new proposal from the African, Caribbean and Pacific Group of States (ACP),
- ❺ a new proposal from the Least-Developed Country Group (LDCs),
- ❻ a new proposal by a group of six Latin American (LAC) countries (Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay), and
- ❼ a previously discussed joint proposal by New Zealand, Iceland and Pakistan.<sup>8</sup>

It is worth noting that ACP, LDC and LAC proposals now contain draft proposed text. This sends a positive message of engagement a decade after Chair of the Rules Committee in 2007 made a proposal to resolve the lock of the fisheries subsidies negotiations.<sup>10</sup>

<sup>1</sup> [https://www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/mc11\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc11_e/mc11_e.htm)

<sup>2</sup> [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>3</sup> [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/anrep17\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep17_e.pdf)

<sup>4</sup> Page 42, WTO Annual Report 2016, Op.cit.

<sup>5</sup> See SDG Target 14.6 at <https://sustainabledevelopment.un.org/sdg14>

<sup>6</sup> See Paragraph 13 (p) of the Call for Action at <https://oceanconference.un.org/call-foraction>

<sup>7</sup> The Chair’s compilation is available at: [https://www.wto.org/english/news\\_e/news17\\_e/fish\\_28jul17\\_e.htm](https://www.wto.org/english/news_e/news17_e/fish_28jul17_e.htm) The seven proposals can also be found at: [https://www.wto.org/english/news\\_e/news17\\_e/fish\\_20jul17\\_e.htm](https://www.wto.org/english/news_e/news17_e/fish_20jul17_e.htm)

<sup>8</sup> All proposals can be downloaded from the WTO website page [https://www.wto.org/english/news\\_e/news17\\_e/fish\\_20jul17\\_e.htm](https://www.wto.org/english/news_e/news17_e/fish_20jul17_e.htm)

<sup>9</sup> Before July 2017, all proposals, with the exception of the EU’s, only focused on modalities and elements and did not offer text.

<sup>10</sup> See WTO document TN/RL/W/213

## Whether multilateral or plurilateral, the agreement needs to be ambitious

BLOOM and the Varda Group welcome the progress achieved in preparation for this year's Ministerial Conference, and urge WTO members to make all possible efforts to reach a deal this year on a strong and environmentally sustainable agreement in line with the SDG target 14.6 2020 deadline.

If a meaningful multilateral agreement were not to be agreed by WTO members in Buenos Aires, we believe that there would be support for a plurilateral agreement involving as

many countries as possible, as a complementary approach. Both approaches are not necessarily mutually exclusive: if the level of ambition reached in a multilateral agreement is not strong enough, supplementary plurilateral commitments by WTO Members could help further implement the 2020 target of SDG 14.6.

### THE RED LINE

What would be unacceptable would be to let one or a few countries prevent the adoption of an environmentally functioning outcome, thus undermining the credibility of the Sustainable Development Goals.

*“The planetary ecosystem is being severely stressed by the effects of accumulated human activity. The great task of our times is to undertake the remedial action required on a global scale.*

*Protecting fish stocks is critical to the health of the Ocean, which in turn is critical to the health of the planetary ecosystem.*

*Eliminating harmful fisheries subsidies is key to our remedial efforts and to meeting the universally agreed targets of Sustainable Development Goal 14.”*

### Ambassador Peter Thomson

Special Envoy for the Ocean of the UN Secretary General  
13 September 2017



→ United Nations Secretary-General António Guterres has appointed Peter Thomson of Fiji as his Special Envoy for the Ocean

# COMPARATIVE ANALYSIS OF THE SEVEN WTO PROPOSALS

BLOOM and the Varda Group would like to share a comparative analysis of the seven proposals, and express their preferences on each of the key issues.

## ISSUE 1 Scope of the subsidies prohibitions

While there appears to be consensus about the scope of fisheries to be covered by any agreement (i.e. marine catch), the scope of the subsidies prohibitions remains an open question, in particular the types of activities concerned and the geographical scope, as all seven proposals suggest different approaches.

→ While it is good news to see that all seven proposals envisage a prohibition of subsidies related to IUU fishing, in keeping with SDG14.6 the **agreement must also address over-fishing and overcapacity.**

There is a strong case for prohibiting subsidies in relation to at least the following three areas:

- I. IUU fishing,
- II. Overfishing, and
- III. Overcapacity

as proposed by the LAC, ACP and LDC countries.

→ We also believe the proposal by New Zealand/Iceland/Pakistan to put an end to subsidies for fishing in Areas Beyond National Jurisdiction would play an important role in restoring and maintaining fish stocks at sustainable levels, especially as far as fuel subsidies are concerned, but it is important to recognize in this context that the distribution of fish stocks does not follow the 200 nautical mile boundaries of EEZs.

→ The EU proposal to prohibit subsidies for the transfer of fishing vehicles to other countries should also be taken into consideration.

## ISSUE 2 Overfished Stocks

It is important that the agreement contains a clause on over-fishing in order to comply with SDG 14.6 and to properly address the issue of unsustainable fishing. A key issue, however, lies in the definition of ‘overfished’ stocks. In their respective proposals the EU, ACP, LDC and LAC\* countries define overfished stocks by reference to determinations by RFMOs or national authorities.

→ While it makes sense to refer to these determinations, data provided by national authorities and compiled by RFMOs may not always be reliable. With this in mind we would suggest that **it would be desirable to reinforce this notion by agreeing on an objective definition of ‘overfished’** as suggested by New Zealand/Iceland/Pakistan i.e. “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 knowledge available”.<sup>11</sup>

→ We also believe it is important to incorporate the EU proposal that the burden of proof should be applied in line with the precautionary principle, inter alia that **in the absence of sufficient data, “the stock shall be presumed to be in an overfished condition”**.<sup>12</sup>

\* ACP African, Caribbean and Pacific Group of States  
LDCs Least Developed Countries  
LACs Latin American countries

<sup>11</sup> Definition on page 6 of the New Zealand/Iceland/Pakistan proposal. It is worth noting that this definition is similar to the one used by NOAA in the USA.

<sup>12</sup> Footnote 3bis, page 3 in the EU proposal.

### ISSUE 3 Overcapacity

→ It is equally important that the agreement contains a provision on the **need to prevent overcapacity, given its role as a key driver of overfishing and stocks depletion**. With this in mind, we urge WTO members to support the proposals of the EU, Indonesia, LDC and LAC countries to define overcapacity broadly, in particular in relation to the construction, improvement and transfer of fishing vessels.

→ It is also important to address **fuel subsidies, arguably those that have the greatest impact on overcapacity**. According to UNCTAD<sup>13</sup> and academic research<sup>14</sup>, without some form of fuel subsidies certain distant water fishing operations would not be commercially viable. This is also true of certain high seas fisheries.<sup>15</sup>

### ISSUE 4 Geographic Scope

**There is a strong case for extending the prohibitions to the entire ocean and not limiting them by reference to specific geographic areas (e.g. a country's EEZ) as some proposals suggest doing.** Ships move, and so do fish stocks. Overfishing is a global problem in the global ocean as a whole and geographical limitations could present obstacles for the conservation and sustainable use of straddling and migratory fish stocks – it would therefore be highly inadequate to limit global efforts against overfishing to particular areas and to exclude others. Fish know of no human-created borders so why should subsidies prohibitions?

Furthermore, under certain circumstances it can be difficult to track a subsidy to a particular fishing area, as the beneficiary vessel or company can fish in different areas in different seasons and over the years, and can adapt to circumstances according to various factors: changing market demand, national regulations, quota allocations, etc.

### ISSUE 5 Exemptions

We understand why the case is being made to exempt certain subsidies from the prohibitions, in particular in relation to aquaculture and inland fishing. However, **WTO members should be careful that the exclusion of aquaculture does not create a possible loophole** concerning subsidies for forage and seed/juvenile fish taken out of the ocean to feed aquaculture farms.

We agree that, as the EU is proposing<sup>16</sup>, fisheries subsidies seeking to promote positive social and environmental objectives, such as those improving health and safety for fishers or promoting sustainable fisheries, do not fall within the category of subsidies subject to this negotiation. However, listing them in the text might be redundant if the scope of the agreement on harmful subsidies is well reflected in its title or in the text.

<sup>13</sup> UNCTAD Trade & Environment Review 2016, "Fish Trade".

<sup>14</sup> Sumaila, U.R., Khan, A., Teh, L., Watson, R., Tyedmers, P., and Pauly, D. (2010). Subsidies to high seas bottom trawl fleet and the sustainability of deep sea benthic fish stocks. *Marine Policy*, 34(3), 495-497.

<sup>15</sup> Report of the Global Ocean Commission, "From Decline to recovery, a Rescue Package for the Global Ocean", 2014.

<sup>16</sup> Annex I in the EU proposal.

## ISSUE 6 Special and differential treatment

In view of the importance of protecting fish stocks, we agree with New Zealand/Iceland/Pakistan that special and differential treatment needs to be proportional to, and appropriate for, the disciplines and must not undermine their effectiveness.<sup>17</sup> As such, we agree that the **key subsidy prohibitions should apply to all members, in particular subsidies for IUU fishing.**

However, we also agree that there could be particular cases where the timing for implementation by certain developing and least developed countries could be envisaged, in particular in relation to subsistence/artisanal fishing, in response to proposals by the EU<sup>18</sup> and Indonesia.<sup>19</sup> However, it is important that any such exemptions be strictly limited and the definition of subsistence/artisanal fishing carefully circumscribed (e.g. Indonesia's definition of artisanal fishing by reference to "local trade" to avoid defeating the purpose of the agreement).

We also agree that it is reasonable to recognize special and differential treatment regarding technical cooperation, transparency and transitional arrangements – see below, Issues 7, 8 and 9 for further details.

## ISSUE 7 Technical Cooperation

We agree with the concepts in the proposals by Indonesia, ACP, LDC and LAC\* countries that technical cooperation be provided from developed to developing countries and LDCs<sup>20</sup> in support of fulfilling their sustainable development goals and commitments. **It is a responsibility of countries with large fishing fleets to provide assistance,** in particular for human capacity building, reporting mechanisms, fish stocks assessment, monitoring and enforcement. Such provisions, in line with our common but differentiated responsibility, must be proportionate.

## ISSUE 8 Transparency

The EU, ACP, LDC, LAC countries and New Zealand/Iceland/Pakistan all propose enhanced notifications of fishing subsidies. We agree that **data collection is essential in order to understand, characterize and monitor the subsidies granted.**

→ We agree with the proposal of ACP that such notifications should not be overly burdensome for developing countries with capacity constraints, especially LDCs. However, as no country should be exempted from notification requirements, specific issues could be addressed under Technical Cooperation (Issue 7, above).

→ Accordingly, we also agree with setting out a list of minimum information such notifications should include. We agree in particular with the proposals of the EU, LDC, LAC countries and New Zealand/Iceland/Pakistan that notifications provide key details of

- I. The programme name;
- II. Legal basis and granting authority of the programme;
- III. Level of support provided, and
- IV. Type of marine fishing activity supported.

We would recommend adding:

- V. The name of the subsidy recipient,
- VI. Information about what goal the subsidy is granted for.
- VII. It is important that all information coming from current and future notifications should be compiled in an open and user-friendly database or platform.

<sup>17</sup> Para. 3.13, page 4 in the NZ/Iceland/Pakistan proposal.

<sup>18</sup> Article 4.1 of the EU proposal.

<sup>19</sup> Article 3.1 of the Indonesia proposal.

<sup>20</sup> Article 5.2 of the ACP's proposal.

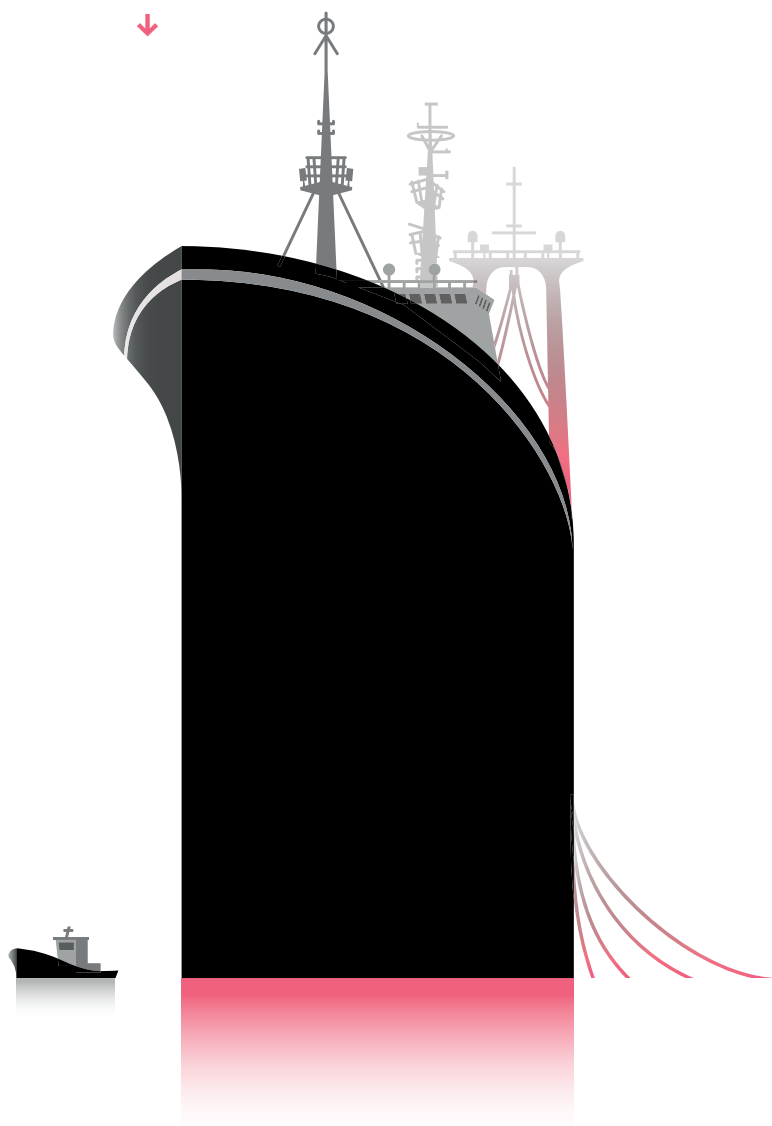
## ISSUE 9 Transitional Period

The EU, ACP, LDC, LAC countries and New Zealand/Iceland/Pakistan all propose the establishment of a transitional period. This may be reasonable in relation to data needs listed above that will require the establishment of enhanced collection and monitoring programmes beyond existing obligations already contained in the WTO Agreement on Subsidies and Countervailing Measures (ASCM). Some of the WTO's members may have already granted certain fisheries subsidies, which it could be difficult or even unlawful to limit or prohibit retroactively. It may also be reasonable, as proposed by the ACP and LDC, to have slightly longer transitional periods for developing countries and LDCs.

However, we would suggest that **any such transitional period should be kept to an absolute minimum and should not apply to the most egregious types of subsidies**, in light of the fact that:

- I. The issue of fisheries subsidies has been debated for many years within the WTO and for many decades in other international fora, as reflected for example in Paragraph 173 of the Rio+20 conference outcome document *The Future We Want* (2012)<sup>21</sup> and the Johannesburg Plan of Implementation;<sup>22</sup>
- II. SDG 14.6 was formally adopted by Heads of State and Government in September 2015 and agreed several months before, and provided in any event for a five-year implementation phase (by 2020);
- III. The reality and urgency of protecting fish stocks and the marine environment from further degradation are putting jobs and ecosystem services under unnecessary additional pressure. We agree in particular with the proposal of New Zealand/Iceland/Pakistan that it would be inappropriate to have a transitional period for subsidies provided to IUU fishing;<sup>23</sup> and
- IV. The effects of measures to phase out or reform fisheries subsidies take time in generating positive change in the water on fish stocks and marine biodiversity, even if they are implemented by 2020 in line with SDG14.

**Large-scale fleets receive 187 times more money in fuel subsidies than small-scale fisheries.**



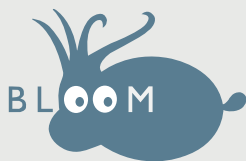
<sup>21</sup> See Paragraph 173 of *The Future We Want*: <https://sustainabledevelopment.un.org/futurewewant.html>

<sup>22</sup> See Paragraph 31(f) of the Johannesburg Plan of Implementation: [http://www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/WSSD\\_PlanImpl.pdf](http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf)

<sup>23</sup> Para. 3.15 on page 5 in the New Zealand/Iceland/Pakistan proposal.



BLOOM and the Varda Group count on you to ensure the WTO 2017 Ministerial Conference is a ground-breaking success for the preservation of the ocean and fishing communities.



### About BLOOM

→ A non-profit organization founded in 2005 that works to preserve the marine environment and species from unnecessary destruction and to increase social benefits in the fishing sector.

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### About the Varda Group

→ An international consultancy established in 2003 that provides strategic and campaign expertise and coordination services across a wide range of international environmental and social issues.

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