



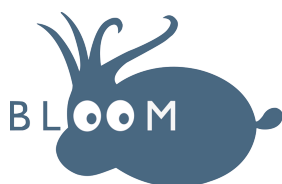
THE LOW HANGING FISH

Steaming together towards a successful outcome for the ocean, fishers and nations at WTO MC11

Analysis of the Fisheries Subsidies Draft Ministerial Decision

NO POLITICAL TANGO, PLEASE !

Buenos Aires, 10 December, 2017



Ref: Draft Ministerial Decision on Fisheries Subsidies to the WTO Ministerial Conference ([Document WT/MIN\(17\)/W/4](#) of 6 Dec 2017 – And Canada, European Union, Iceland, New Zealand and Norway text on ‘overfished stocks’ placeholder contained in paragraph 2.2 of the Draft ([Document WT/MIN\(17\)/25](#) of 8 December).

In Buenos Aires, the Ministerial process on fisheries will be facilitated by [Ms. Kamina Johnson Smith](#), Jamaica’s Minister of Foreign Affairs and Trade. Negotiations have been scheduled to start at **16h00 Monday 11 December in Room Pacífico B in the Hilton.**

ANALYSIS OF THE DRAFT MINISTERIAL DECISION

PARAGRAPH 1

The first paragraph contains an agreement to continue constructive fisheries subsidies negotiations with the aim of adopting by 2019 an agreement on comprehensive and effective disciplines in line with Target 6 of Sustainable Development Goal 14 on the Ocean.

OUR RECOMMENDATION

We cannot overemphasize the need to conclude the entire package by 2020, including action against subsidies that encourage overcapacity, as expressly commanded in SDG14.6. This will require continuous efforts between now and MC12, the WTO Ministerial conference that will precisely coincide with the deadline set by SDG14.

PARAGRAPH 2.1

ALTERNATIVE 1 (§2.1)

This is a straight forward statement combining an **elimination and standstill** clause: “*agree not to grant or maintain subsidies that contribute to IUU*”.

OUR RECOMMENDATION

This is the best alternative. It is the only one which complies with SDG14.6’s commitment to “*refrain from introducing new subsidies*” that contribute to IUU fishing. **We strongly advocate to support this language.**

ALTERNATIVE 2 (§2.1)

In this alternative, “[...] each Member shall endeavour to eliminate [...]” represents a significant weakening of SDG14.6.

OUR RECOMMENDATION

This language is too broad and unclear as to whom could benefit from it. Whilst we recognize the difficulties which may be found in certain Least Developed Countries, we would encourage WTO Members to work together to address any outstanding difficulties in the remaining two years.

ALTERNATIVE 3 (§2.1)

Alternative 3 qualifies subsidies that contribute to IUU fishing activities as those set out in paragraph 3 of the FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA) “*as implemented in national laws, regulations and administrative procedures.*”

OUR RECOMMENDATION

Given the voluntary nature of the FAO IPOA, the reference to its application as implemented in national laws, regulations and administrative procedures **is not helpful** in the light of possible disparities at national level.

ALTERNATIVE 4 (§2.1)

The fourth alternative restricts the scope of application of the prohibition to fishing activities taking place in areas beyond national jurisdiction (beyond the 200 miles EEZ of coastal States).

OUR RECOMMENDATION

Whilst we recognize the importance of conserving and using marine biodiversity sustainably beyond national jurisdiction, we are concerned that **Alternative 4 would not be practical** in the light of the fact that subsidized vessels, fishing companies, or port infrastructures can be used for fishing in areas both within and beyond national jurisdiction. **This language is therefore drastically insufficient and we recommend steering clear from Alternative 4.**

ALTERNATIVE 5 (§2.1)

It contains opt out provisions in case a Member meets capacity constraints that prevent it from immediately implementing the prohibition, within its EEZ and/or beyond (optional). Such notification could cease to have effect by the end of 2020 (square bracketed segment).

OUR RECOMMENDATION

As presently proposed, Alternative 5 could offer a blank check to any country. At the very least, it would **be indispensable to maintain the final square bracketed sentence** to prevent any abuse after the end of 2020. **This language dangerously weakens the objective of the disciplines and potentially opens important loopholes.**

PARAGRAPH 2.2

Paragraph 2.2. (proposal submitted by Canada, European Union, Iceland and Norway) addresses, in line with the mandate contained in SDG14.6, subsidies to fishing that negatively affect overfished fish stocks. Accordingly, WTO Members “agree” or “shall endeavour” (both options square bracketed) “*not to grant or maintain subsidies to fishing that negatively affects targeted fish in an overfished condition.*”

OUR RECOMMENDATION

This proposal represents an important addition and provides an important safety net to help secure that no further damage to fish stocks is caused by unsound fisheries subsidies. With it, the Draft Ministerial Decision comes closer to meeting the mandate contained in SDG14.6. We are aware that considerable time was spent in Geneva in the last few weeks to agree on a definition of “overfished stocks”. While we believe that it is not the business of the WTO to define which stocks are overfished or not, **we agree with Members who advocate that unassessed fish stocks must be considered overfished, in line with the precautionary approach.**

PARAGRAPH 3

This paragraph addresses subsidies that contribute to overcapacity, a category of subsidies that is explicitly targeted by SDG14.6. The entire paragraph is currently square bracketed, indicating that there is no consensus, and within it several segments are also between brackets.

OUR RECOMMENDATION

Eliminating overcapacity is the cornerstone for a healthy and sustainable ocean. The role of overcapacity as the key driver of fisheries decline is well documented. This is why consensus was reached on this issue when the SDGs were negotiated in 2015. **If overcapacity is not addressed in this Ministerial Decision, it will result in maintaining an unjust situation whereby large industrial fleets from dominant fishing nations will continue to benefit, de facto, from a special and differential treatment.** It is thus in the benefit of those WTO Members most concerned with the defence of their small-scale fishing sector to support strong disciplines against subsidies that contribute to overcapacity.

PARAGRAPH 4

WTO Members reiterate their commitment to implement existing notification obligations under the WTO Agreement on Subsidies and Countervailing Measures. It also contains a sentence in square brackets whereby WTO Members commit to work towards additional transparency in respect of fisheries subsidies. That sentence also contains a segment in square brackets which reiterates the need to take account of capacity constraints of developing countries including Least Developed countries is referenced.

OUR RECOMMENDATION

Transparency, data collection and information exchange are key elements to the success of any Ministerial Decision on the elimination of harmful subsidies. **We encourage Ministers to agree on and incorporate the language in square brackets with regard to working towards additional transparency**, taking into account the difference between specific and other types of subsidies.

PARAGRAPH 5

It establishes that one year after the adoption of the Ministerial Decision, Members subsidizing their fisheries shall notify the Committee on Subsidies and Countervailing Measures how it has implemented this Decision.

OUR RECOMMENDATION

This draft paragraph does not contain any square brackets other than where Paragraphs 2, 3 and 4 are mentioned, pending their fate by the end of the ministerial conference.

PARAGRAPH 6

In accordance with this Paragraph, the Committee on Subsidies and Countervailing Measures would be instructed to hold, in mid-2019, a dedicated review of Members notifications, and to report to the WTO General Council before MC12.

OUR RECOMMENDATION

There are no square brackets in this paragraph, thus reflecting consensus on preparing this dedicated review that could help identify issues for consideration before MC12.

PARAGRAPH 7

It clarifies that nothing in this Decision shall be interpreted as having any legal implication regarding territoriality, sovereignty or maritime jurisdiction.

OUR RECOMMENDATION

This clause, which does not contain any square brackets, has been inserted to put to rest certain tensions which, reportedly occurred during meetings of the Negotiating Group on

Rules with regard to the implementation of this Decision in certain maritime territories currently subject to unresolved disputes.

PARAGRAPHS 8 AND 9

These are square bracketed paragraphs that would establish that nothing in this Decision shall prejudice the positions of Members regarding fisheries subsidies negotiations or their final outcome (Para 8), and exclude this Decision from the scope of agreements subject to the Dispute Settlement Understanding and from the list of rights and obligations under the WTO Agreement (Para 9).

OUR RECOMMENDATION

We urge Ministers to delete these paragraphs because they would both put into question the willingness and ability of the WTO to ever conclude fisheries subsidies negotiations and to ever enforce fisheries subsidies disciplines. These last paragraphs would represent two damaging steps backward after one step forward accomplished. **Political tango is not the way to go!**

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