

**Statement at the open-ended meeting on S&DT provisions in the NGR fisheries subsidies negotiations held on Monday, 31 May 2021**

**General comments:**

- Thank you Chair for convening this meeting on the issue of special and differential treatment (S&DT). I have listened to the interventions carefully since the morning and I don't see much convergence from the earlier stance of a set of Members who are seeking appropriate and effective S&DT and those who are opposing it. At least there is one consensus that target 6 of SDG 14, which includes appropriate and effective special and differential treatment for developing country Members and LDCs should be an integral part of the fisheries subsidies negotiations. But I sometimes wonder that when we hear in favour of the needs-based approach, the appropriate and effective S&DT is for which Member – is it appropriate and effective for those who are seeking the S&DT or is it appropriate and effective for those who are trying to deny this to those Members who are seeking it?
- Chair, in the revised text TN/RL/W/276, the scope and application of S&DT have been narrowed down drastically in all three pillars of negotiations. We have time and again explained the necessity of appropriate and effective S&DT. We are of the view that the latest text further takes us away from concluding this discussion. Not having the ability of developing countries who are not enjoying the benefits of large numbers of industrial vessels to protect the livelihoods of small and artisanal fishers, food security concerns and policy space for developing fishing capacity, it certainly needs due consideration.
- Let me first touch upon some of the common objectives and the issues in the S&DT discussion. Repeatedly we have flagged that this is a discussion of sustainability and therefore, the issue of polluter pays principle with common but differentiated responsibility cannot be taken away. Are we trying to protect such Members who have enjoyed a large number of industrial vessels? Are we trying to protect those Members who are fishing in distant water? Are we trying to protect those Members who are fishing in EEZ of other Members? Are we trying to protect those Members who have doled out a large amount of capital subsidy in past, be it capacity and now giving subsidy to help in operation of such large capacity or industrial vessels and fishing in the territory of other Members, though legally?
- Is it an instrument we are negotiating designed for sustainability or we want to keep control of the present “capacity catch” (those who have the capacity will continue to capture the fish) in a manner the issue of “market access” is being brought out here, in the form of the sustainability principle? We have seen that happening in the Agreement on Agriculture, where we have tried to maintain the status quo and therefore, we have given market access or advantageous situations to a certain set of countries.

- Chair, is it correct to say that fishing within 12 NM is the prime reason of all the problems we are trying to solve here? Certainly, we have not got any evidence in this regard that fishing within one's own area has led to unsustainability.

### **Specific comments:**

#### **IUU pillar**

- Chair, we have heard several Members' strong opposition to any kind of S&DT in the IUU pillar. First, let me clarify, we have never talked about I of U&U. We have always said that nobody here wants protection for I component of IUU, so it is wrong narrative that certain set of Members who are seeking S&DT, either in Article 3 or in the Scope are trying to legitimize illegal fishing. let me reiterate that no Member wants to subsidize the illegal part of fishing. India's position is also the same, as by seeking S&DT under this pillar, we are not intending to subsidize illegal fishing. First and foremost is that we never sought any S&DT for the Illegal part of IUU.
- As regards our proposals seeking S&DT in the IUU pillar it is in two parts. One is an exception up to 12 nautical miles for small and marginal fishers and the second is a transition period for fishing in EEZ.
- While it is difficult to ascertain where maximum IUU fishing takes place but it is undeniable that IUU fishing that may take place within the 12 nautical miles of territorial waters of a coastal state by a small fishermen is far less serious in nature than that which occurs in high seas by industrialised fleets or by foreign distant water fishing fleets in others' waters. Some organisations such as the Pew Charitable Trust has also found that a lot of unregulated fishing occurs on the high seas. Patchy regulation, little enforcement and the vast expanse of the ocean – the high seas cover almost 45 percent of our planet – combine to allow rampant illegal and unregulated fishing in those areas. So we should concentrate our time and energy in those areas.
- India's proposal seeking S&DT for 'U' and 'U' in the IUU pillar has been misconstrued as it supports IUU fishing. Let me again clarify that this is not the case. Where is the evidence to suggest that the root cause of IUU fishing is the fishing taking place within 12 nautical miles of a coastal state? What we are seeking as an exemption up to 12 NM for 'U' and 'U' is also being sought by some Members as a scope exemption for artisanal or subsistence or small scale fishing. Some of these Members want this exemption for artisanal and small scale fishing not to be limited to 12 NM. However, we have been seeking this exemption only up to 12 NM. We are agreeable if this exemption is for low income or resource-poor or livelihood fishing activity. Thus, we disagree with those having a view that by seeking S&D for 'U' and 'U' in the IUU pillar will be supporting IUU fishing.

- Chair, the S&DT provisions under Article 3.8 of the IUU pillar has been curtailed drastically by the extremely short transition periods of 2 years for IUU fishing. We are of the view that fishing activities in the territorial sea are undertaken by small scale, artisanal and subsistence fishers who are resource-poor and marginalised communities and generally ill-equipped for record-keeping of fish catch. This is well recognised in Chair's revised text with a very narrow two years transition period for low income, resource-poor or livelihood fishing up to 12 NM. Chair we should also take note of Para 3.4 of IPOA -IUU which states that "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). Considering the situation of low income, or resource-poor or livelihood fishing remaining the same as these are today, this exception up to 12 NM for U&U must be without any time limits.
- Further, to put in place requisite mechanisms to meet the standards of appropriate institutional mechanisms towards establishing robust monitoring, control and surveillance system, which is both modern and affordable, we need to have a comprehensive vessel monitoring system which will entail huge expenditure. This type of expenditure is difficult for resource-poor developing countries and LDCs. In addition, it is essential to deploy adequate manpower for effective documentation and monitoring of fish catch and will also need to ensure capacity building of fishers and managers through training for record-keeping including that of logbooks. All this will require a time taking exercise and adequate resources. In view of these reasons, we need 7 years S&D transition period for the U&U part of the IUU in the EEZ. Let me clarify that we are not seeking any S&DT for Illegal fishing. By seeking this S&D as a transition period, we are showing our good faith in implementing the disciplines under IUU.

#### **Overfished stocks:**

- Chair, with regard to Article 4.4, based on reasons provided by us for Article 3.8, we request that for small scale, artisanal and subsistence fishers who are resource-poor and marginalised communities, there is a need for a permanent carve-out instead of a one time 2 years implementation period up to territorial sea i.e. 12 nautical miles measured from the baseline.
- For fishing in EEZ, we request for S&DT in the form of a transitional period of 2 years for a possible withdrawal of the subsidy programme once stocks are declared to be overfished. We would like to clarify that our proposal is not for a one time implementation period given at the time of entry into force of the agreement but for a transition period to implement disciplines when a stock is declared overfished. The reason for seeking such a time period is that most of the subsidy programmes are for non-targeted fishing and the implementation of the disciplines will pose a challenge to developing countries and LDCs having tropical fisheries with multi-species. It will be difficult to give immediate effect to the

prohibition of subsidies if a stock is overfished when the subsidy programme is non-targeted.

#### **OCOF:**

- Chair, the objective of these negotiations is the issue of sustainability. We believe that the present text appearing in articles 5.1.1 and 5.2 do not reflect what steps we will be taking to reverse the damage done to the environment. We believe that the concept **of the polluter pays principle** should be applicable for the sustainability of fisheries resources. Our understanding is that text of Article 5 will keep the asymmetries as such with those who have already created over capacities and adversely affecting developing countries including LDCs with no scope for future policy space to catch up. The present language of Article 5.1.1 in a way provides reverse S&DT to such Members who are largely responsible for creating this situation, whereas nothing substantial has been provided to developing countries and LDCs in Article 5.5.
- Chair, we would also like to remind Members that we have shown considerable flexibility for the S&DT provisions under OCOF as we have scaled down our proposal from permanent carve-out to a transition period based on objective criteria for EEZ and RFMO competence area.
- Chair, concerning S&DT provisions under the pillar of OCOF, our understanding is that the ALT2 is not based on any developing country's proposal. Therefore, it cannot be the basis for developing consensus on starting negotiations on S&DT in OCOF. The current S&DT provision for low income, resource-poor or livelihood fishing in the territorial sea (12NM) doesn't meet our needs. For fishing in EEZ and RFMO area, the S&DT has to be based on criteria that take into account development needs, developing capacities and time to implement these disciplines. A 5 year or 7 year transition period proposed in the Chair's text cannot be a starting point of negotiations. ALT2 is thus not at all acceptable to us.
- The S&DT proposal on OCOF contained in ALT1 of the revised text seeks to provide a permanent carve-out for the territorial sea. This is similar to the S&DT sought in Article 3 and Article 4 by small scale, artisanal and subsistence fishers who are resource-poor and marginalised communities.
- Chair, the text in 5.5(c) reflects the needs of developing countries and LDCs as per the mandate. As has been said before on numerous occasions developing countries need policy space to develop their fisheries and thus the text in Article 5.5 (c) attempts to provide that flexibility for developing countries and LDCs to maintain subsidy programmes. The four criteria in 5.5(c) are good indicators of the development level of developing countries and LDCs, which in turn has a bearing on their fisheries sector.
- We all should be conscious of the fact that developing countries and LDCs are at different levels of development as far as fisheries are concerned. For some developing members, fisheries account for a significant portion of their economy and an important and affordable source of protein to address malnutrition. Several developing countries are not engaged in industrial fishing. Further, most of the

developing countries are at a low level of HDI with low GNI per capita. The high share of Agriculture, Fishery and Forestry in the GDP of certain developing country Members clearly signifies the dependence on the primary sector including fisheries and justify support for their fisheries. Thus, the proposed S&DT criteria in Para 5.5(c) are pragmatic and provide a logical rationale to justify the need for S&DT. To our friends in the ACP Group, we would like them to have a look at Article 11.3 which has been put in the revised text relating to a natural disaster. We need to discuss this aspect which may take care of the fluctuations in GNI per capita in case of natural disasters which may affect small island nations, and we can work on those criteria of GNI per capita read with Art. 11.3. This should give comfort to Members that the S&DT under overcapacity and overfishing is not open-ended and that the developing countries availing these exemptions will not be eligible to get this S&DT once they cross these thresholds.

### **Final comments on Article 8:**

- Chair, the newly introduced language on additional notification requirements under Article 8 ignores the limited capacity of developing countries and LDCs to collect the information required for the notification. Any recourse by developing country Members and LDCs to the S&DT provisions are contingent upon their complying with the additional notification obligations. As complying with these obligations is likely to be extremely onerous and burdensome for most developing countries and LDCs, therefore, it is a matter of concern that they may not be able to seek recourse to these S&DT provisions. In fact, it is very interesting to see that on one hand, we have agreed that there is a need for S&DT because these Members lack the capacity to provide or report such information and at the same time, we are putting a conditionality that only when you collect this information and notify to the WTO, then only you will be eligible for availing the S&DT provided in Article 3, 4 and 5. So, it is in fact a catch 22 situation that certainly Members will not be able to notify what has been now been envisaged in Article 8 of the revised text and therefore, they will not be able to avail S&DT. Chair, you may need to look at this loop of not ending cause and reason problem in Article 8.

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