

ACP GROUP

POINTS

QUESTIONS OF THE RNG CHAIR

HOD MEETING

17 MAY 2019

Thank you, Mr. Chairman,

I speak on behalf of the ACP Group

We would like to thank you for organising this meeting and for the questions which you shared with us ahead of time. Before proceeding to address the questions that you have posed, the ACP Group wishes to express its views on the state of play of negotiations.

In your fax dated 10 May 2019, you reminded us of the Ministerial deadline for fisheries subsidies negotiations as agreed in Buenos Aires. The reality on the ground suggests that in order for us to meet this deadline, urgent progress must be made on the negotiating text. In the same vein, we note a direct reference by Ministers in Buenos Aires to the TN/RL/W/274/Rev.6 as a basis for these negotiations, yet we have not seen sufficient effort to return to this text.

Any attempt to substitute it may further hinder the process and result in imbalances that do not reflect the work undertaken over the last two years. More importantly, t we are now required to complete a consensus document with alternatives narrowed down to the key differences among delegations. Our question is: where would this text come from, if not from W 274/Rev.6? Judging from the proposals on the table, it would seem that only certain elements of the text have been captured. This is not a desirable outcome for the ACP Group as our proposal in TN/RL/GEN/182/Rev.1 remains the basis of our engagement.

We would now like to address the three (3) questions.

1 GENERAL

Reconciling the shared commitment of all Members, as reflected in SDG Target 14.6 and the MC11 mandate, not to subsidize fisheries in ways that harm the sustainability of

those fisheries, with the recognition of the need for flexibilities (*Inter alia* for capacity to implement and to develop fisheries sustainably) by developing and least-developed country Members, and with concerns over the burden of additional transparency,

As regards Question 1, we preface our comments by saying that the ACP Group wishes to reiterate its general views that the RNG must focus on text- based negotiations, allowing space for informal engagement between delegations. At the same time, we can best meet the instructions of our Ministers in Buenos Aires by not only remaining ready to converge and compromise but by recognizing redlines.

New proposals should take care to avoid adding complexity or imposing text ideas that are another way of insisting on aspects that touch redlines. Instead we should focus on where we have general and specific common direction and elements for prohibitions. We will, in responding to your questions, point out what we refer to in terms of our objective for simple and clear disciplines, but are becoming more complex, and difficult to resolve.

- 1.1. What is the nature of any sustainability obligations that Members would assume, for example, prescriptive or more general
 - a) A set of specific standards for sustainability, such as conduct of stock assessments, stock status indicators or reference points, that all Members would be required to meet; or
 - b) An obligation on all Members to establish and implement such sustainability standards and measures as each deems appropriate for its specific situation and level of development; or
 - c) A capping approach either instead of or as a complement to (a) and/or (b)?

As regards 1.1:

- The ACP Group strongly opposes expansion of the WTO's mandate into fish management areas such as those involving the conduct of stock assessments, specific indicators and references points that Members would be required to meet. These must be left to the discretion of the Members for areas under their jurisdiction and the relevant RFMO in areas under their jurisdiction.

- A reference to the fact that overfished condition is determined by coastal State Members and RFMOs in this manner, does not mean scrutiny of those determinations. These disciplines are about addressing the subsidy. Triggers related to the condition of stock should be a limited reference that defers to the existing rights of coastal States and RFMOs in their jurisdictional space.
- Imposition of obligations to establish and maintain measures would extend into areas which fall outside of the WTO's mandate.
- At this time the ACP Group is cautious about capping proposals that appear to be incongruous with the mandate before us to eliminate subsidies to IUU fishing and to prohibit certain subsidies that contribute to overfishing. Some proposals disregard truly "good subsidies" such as, for example disaster relief, research and development, improving compliance with fisheries management regimes aimed at sustainable use and conservation, environment, and recovery of stocks. Also missing from consideration in some of the proposals is the nature of our fishing communities as predominantly artisanal, subsistence and small scale within our exclusive economic zones.
- Moreover, some proposals do not consider the fact that the big subsidizers of distant water fishing, that are indeed causing the depletion of global stocks, would be able to lock in high subsidization. We are equally concerned about a fundamental imbalance that where our subsidies are small or where none are provided, we would be locked in as well. We need space to grow our capacity to provide subsidies that support our communities in a manner that fosters sustained stocks, food security and livelihoods.

1.2. What mechanisms could prevent any in-built flexibilities, for developing Members or generally applicable flexibilities from undermining the effectiveness of the disciplines?

On 1.2:

- The ACP Group considers that the disciplines should not undermine the inherent rights and obligations of our Members to manage, conserve, and exploit resources within our Exclusive Economic Zone including in terms of Illegal, Unreported and Unregulated (IUU) determinations and determining the condition of our fish stocks.

- These rights and obligations are enshrined in the UN Law of the Sea Treaty, customary international law and our national laws.
- Where the WTO is concerned, the triggers should only allow for the effective use of the disciplines to ensure that subsidies to vessels and operators engaged in IUU are prohibited. It has been estimated that over 30 % of catch was illegal thus resulting in de facto overfishing. In addition, more than 50% of the fishing in the Exclusive Economic Zones of many of our members is foreign fishing from large scale industrial vessels. Certainly, our Members are not subsidizing these vessels.
- Flexibilities sought by the ACP Group were modest in that we did not seek special and differential treatment for disciplines to prohibit subsidies contributing to illegal fishing. On unreported, unregulated fishing we only sought additional transitional measures to adapt our laws and regulations should there be any implications for us.
- On overfished condition we did not seek any special and differential treatment as long as this discipline is a simple one and the determinations are left to the coastal states and relevant RFMOs in their respective jurisdictions. We thought it was simple to prohibit subsidies to fishing in overfished condition. However, some Members are touting that their advanced fish management allows them to continue fishing stocks that are in an overfished condition. Further we understand that an effects test should be applied here as well or that the cause of overfished condition could be other factors such as climate change. Our view is that whatever the cause of the overfished condition, subsidies should not be provided until the stock has recovered.
- We understand the concerns of Members about any loopholes or circumvention of the disciplines because of exclusions in the scope. We have some elements under scope, which must be discussed, but there can be no agreement without treatment of those subsidies mentioned earlier, that could be considered “good” subsidies and which do not contribute to overfishing.
- Mr. Chairman, we will indeed require specific special and differential treatment for the discipline

in overfishing and overcapacity, and it would seem overfished condition, where effects tests are demanded.

- We have taken a list approach identifying the types of subsidies that enhance capacity to overfish. Whether a list approach or hybrid approach, the special treatment should capture that we depend on artisanal and small-scale fishing within our EEZ. We are not large-scale distant water fishing nations and we are not yet fishing in the high seas. If we are in the high seas, we are not overfishing. We hope that any disciplines would stimulate initiatives for assistance and helping us build our monitoring capabilities to conserve and maintain our fisheries resources.

1.3. How if at all would the nature of the obligations as referred to in 1.1(a), (b) and (c) influence the nature and extent of any minimum additional transparency requirements beyond those already existing under the SCM Agreement?

On 1.3

- The transparency provisions in the ASCM would apply. Any additional requirements must observe the same principles not to intrude beyond what is necessary to implement a subsidy prohibition. We also note that new requirements should be proportionate to the responsibility for subsidies that are contributing to overfishing and that do not target artisanal and subsistence fishing.
- Transparency disciplines should require details of subsidy programmes pertinent to the prohibitions and should not make notification burdensome. It should also not penalize countries that are not the target.

1.4. What are the implications for dispute settlement depending on the nature of the obligations:

- If prescriptive obligations (1.1(a)), could the WTO handle disputes raising fisheries-specific questions (e.g. validity of stock status assessments)?
- If more general, (1.1(b)) or (c)), would dispute settlement review only the existence of the relevant sustainability standards and measures, and the fact and process of their implementation?

As regards 1.4:

The WTO dispute settlement mechanism should not delve into the validity of stock

assessments or other fish management of Members. The mere existence of a management system is sufficient, not to be scrutinized in a WTO review.

It is our understanding that even some developed Members are not able to assess all species of stock. The WTO should not prescribe obligations to assess stocks. The disciplines are on subsidies that contribute to overfishing. Therefore, regarding the discipline on overfished condition, if a stock has not been assessed to be overfished, no trigger has occurred to examine whether a subsidy was provided to fishing that targets an overfished stock.

While not mentioned in these questions today, the ACP redline is coastal State determination of its stock condition within its EEZ and the same for RFMOs in their jurisdiction.

Another redline is that unassessed stocks are not deemed to be overfished. This is not the principle in international rules and should not come into the WTO as such. Many of us are data poor and have methods of assessing stock, consistent with our capabilities. There should be no standard of assessment or requirement to assess stock within the WTO.

2 SCOPE

- 2.1. Using the definition of specific subsidies as per Articles 1 and 2 of the SCM Agreement as the basic scope of the government support measures that would potentially be covered by the disciplines. (Without prejudice to current discussions regarding whether also to include non-specific fuel subsidies in the scope).

Chair on 2.1

As all of the disciplines are for prohibited subsidies – IUU, overfished condition, and overfishing/overcapacity - these are already deemed to be specific in the ASCM.

- 2.2. Further delimiting the coverage of the disciplines to those subsidies relating to the marine wild capture fishing sector (i.e. not to aquaculture nor to inland fisheries). (Without prejudice to whether these subsidies would be only those to fishing or also to other, fishing-related activities (e.g. trans-shipping, processing), and whether any such additional activities would be only at sea or also would include some onshore activities).

On 2.2

A stipulation that the disciplines apply only to wild marine capture fishing could automatically exclude aquaculture or inland fisheries. For the time being the ACP Group would maintain the exclusions for aquaculture and inland fisheries and will consider this again as the other aspects of the texts progress.

Regarding the emphasis in the scope that the disciplines apply to activities at sea, and not processing on land, we see that some Members are still insisting to include onshore activities. We do not yet have convergence. Therefore, the ACP Group would maintain expressed application of the scope to at sea fishing and processing.

3 SPECIFIC ISSUES

- 3.1. On the definition of illegal, unreported and unregulated (IUU) fishing, using the existing, internationally agreed description of these activities that appears in the related International Plan of Action adopted by all FAO Members (the IPOA-IUU), instead of creating a WTO definition. (Without prejudice to exactly how this description would be referred to in the disciplines.)
- 3.2. Extending the above principle where definitions already exist for concepts that need to be referred to in the disciplines.

On questions 3.1 and 3.2

The ACP Group supports the content of paragraph 3 of the IPOA-IUU 2001 as guidance for the meaning of Illegal, Unreported and Unregulated fishing. Here we note that a cross reference to the IPOA-IUU 2001 paragraph 3, could equally be considered. However, we emphasize that the IPOA-IUU is an internationally agreed voluntary guideline from the FAO. In the IPOA IUU, the FAO expressly speaks of Member implementation of the IPOA.

Paragraph 3 also directs us back to national regimes of coastal States and RFMO regimes. In this sense, the practice is in line with our expectations as long as the reference is a static one (the 2001 IPOA-IUU). If the reference is dynamic, without the date, the FAO could change the voluntary guidelines at anytime without WTO Member examination. The new guidelines could

apply in the WTO automatically.