FFA

FORUM FISHERIES COMMITTEE

ONE HUNDRED AND EIGTHEENTH MEETING

Virtual

11 - 14 May 2021

Agenda Item:	**x**
Paper Number:	**FFC118-INFO.14**
Title:	**WTO Rules for Fisheries Subsidies**

Summary:

This paper provides an update on the status of the negotiation of rules for fisheries subsidies at the World Trade organisation (WTO). The paper highlights the current status of the three main priorities for Pacific Island WTO Members including protecting access arrangements from fisheries subsidies disciplines and ensuring that Pacific Island Countries' development interests are reflected in any final agreement.

Recommendations:

The Committee is invited to:

i. note the current status of the negotiations on rules for fisheries subsidies; and

ii. ensure that Fisheries Officials are providing guidance to the Trade Officials on fisheries aspects of the negotiations.

Introduction:

1. WTO negotiations on fisheries subsidies were launched in 2001 at the Doha Ministerial Conference, with a mandate to "clarify and improve" existing WTO disciplines on fisheries subsidies. That mandate was elaborated in 2005 at the Hong Kong Ministerial Conference, including a call for prohibiting certain forms of fisheries subsidies that contribute to overcapacity and overfishing.

2. At the 2017 Buenos Aires Eleventh Ministerial Conference (MC11), ministers decided on a work programme to conclude the negotiations by aiming to adopt, at the 2019 Ministerial Conference, an agreement on fisheries subsidies which delivers on Sustainable Development Goal 14.6.

3. Due to the Covid-19 pandemic the 12th Ministerial Conference of the WTO (MC12) was suspended. The main anticipated outcome of MC12 was a Fisheries Subsidies Agreement (FSA). Members then aimed for a FSA outcome at a special session of the WTO General Council at the end of 2020 in light of the deadline for SDG 14.6. However, no agreement was reached by that deadline and negotiations have continued into 2021. MC12 is now scheduled for the week of 29 November 2021. Members are trying to conclude the Agreement by July to allow WTO Trade Ministers time to review the Agreement before endorsing it at MC12.

4. While only six Pacific Island Countries (Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu) are members of the WTO, the effects of an FSA that did introduce effective limitations on subsidies granted to distant water fishing vessels could have a substantial impact for all Pacific Island Countries, whether they have to comply with the rules or not.

5. The basis of the current negotiations is the second revision of the Chair's Draft Consolidated Text (Rev.2) of the Fisheries Subsidies Agreement issued on 18 December 2020[1].

Background:

5. There are three main prohibitions being advanced in these negotiations:

   i. Eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing.

   ii. Prohibit fisheries subsidies which contribute to overfished stocks.

   iii. Prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing.

6. Pacific Island Countries priorities in the negotiations are:

   i. Preservation of access fees.

   ii. Exclusion of artisanal and small-scale fisheries from disciplines.

   iii. Policy space for future development of fisheries – flexibility for Pacific Island Countries to use subsidies to develop their fishing industries including fleets.

Key Issues:

Access fees

6. Pacific Island negotiators have worked hard to ensure that access and licensing fees are exempted from fisheries subsidies disciplines. There is now a footnote in the Chair's revised draft text (Rev.2) stating that "…government-to-government payments under fisheries access agreements shall not be deemed to be subsidies". However, the treatment of discounted licensing arrangements

[1] Members wishing to receive a copy of the Chair's draft text should contact Fisheries Development Adviser Mr Len Rodwell (leonard.rodwell@ffa.int).

that are used extensively by FFA Members when licensing domestic vessels have not yet been addressed. This remains a high priority for Pacific Island negotiators.

Exemptions for subsistence, artisanal and small scale fisheries

7. Pacific Island negotiators have consistently argued that subsistence, artisanal and small scale fisheries should be exempted from disciplines on fisheries subsidies given their importance for food and livelihood security. As there are no internationally agreed definitions of these fisheries the approach taken has generally been to specify a geographical area to which the exemption would apply with that usually being the territorial seas. This matter will be the subject of discussion at the next round of negotiations held in mid-April.

Policy space for future development of fisheries

8. The aim of policy space is to enable Pacific island governments to use subsidies to develop their fishing industry including building their fleet capacity in future if they wish to fish their own resources and process them. This is being addressed through a range of proposals on special and differential treatment for developing countries which are under consideration, including exemptions for Least Developed Countries or a broader exemption for developing countries that meet certain criteria such as fishing volume and gross national income (GNI) thresholds, and whether they are engaged in distant water fishing.

9. Larger developing countries have argued that the above criteria should not apply and that exemptions should be extended to all developing countries, which would only leave a very small number of WTO Members subject to rules on fisheries subsidies.

Other issues

10 The prohibition of subsidies to overcapacity and/or overfishing has been the subject of considerable discussion. While such subsidies will be subject to a general prohibition, the Chair's draft text currently provides for an exception which allows Members to use subsidies if measures are implemented that sustain stocks at biologically sustainable levels. There is concern that such a provision might provide a loophole that will allow large subsidisers to continue subsiding fisheries to the detriment of smaller countries, including Pacific Island Countries. An additional concern is that this provision brings fisheries management into the WTO, with the possibility that fisheries management measures could be examined in the WTO to determine whether these sustain stocks at biologically sustainable levels. Pacific Island negotiators along with many developing countries have consistently argued that the WTO is not the appropriate body to consider the effectiveness of fisheries management arrangements.

11 On the prohibition to Overfished stocks, there is considerable debate on whether overfished stocks should continue to be subsidised. Some Members argue that no subsidies should be granted to overfished stocks, others argue that only good subsidies (e.g. for stock rebuilding) should be allowed. Others favour a similar exception to that referred to in para 10 above, that would allow members to continue harmful subsidies even though stocks are overfished, if they have management measures in place that will maintain stocks at a biologically sustainable level. This will invite WTO scrutiny on fisheries management measures.

12. On the prohibition of subsidies that support IUU fishing, the DWFNs cannot accept an IUU determination by coastal states or RFMOs on their vessels to automatically trigger the withdrawal of subsidies by them. They are demanding due process which requires IUU fishing determinations by coastal states and RFMOs to be subject to fair, transparent and non-discriminatory procedures. Developing countries are concerned that procedural requirements such as this could be challenged in WTO and unravel the IUU determinations by coastal states and RFMOs, and that such requirements could intrude into domestic processes. A balance needs to be struck on satisfying the DWFNs demand for due process and coastal states rights to enforce domestic laws on IUU fishing.