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Doha fisheries chair issues new text for upcoming talks

The chair of the Doha fisheries subsidies negotiations at the World Trade Organization has issued a draft text on the critical pillar of disciplines on subsidies contributing to overcapacity and overfishing, to be used as the starting point for text-based work in the coming months. While the chair's new draft text appears to break some new ground on several issues, certain asymmetries seem to persist.

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131 Jalan Macalister
10400 Penang, Malaysia
Tel: (60-4) 2266728/2266159
Email: twn@twnetwork.org
Website: https://twn.my

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Doha fisheries chair issues draft text at WTO, but asymmetries persist

The chair of the Doha fisheries subsidies negotiations at the World Trade Organization has issued a new draft text on the crucial pillar of subsidies contributing to overcapacity and overfishing, as the starting point for the text-based phase of the negotiations in the fall.

by D. Ravi Kanth

NEW DELHI: The chair of the Doha fisheries subsidies negotiations at the World Trade Organization, Ambassador Einar Gunnarsson of Iceland, has issued a draft text on "disciplines on subsidies contributing to overcapacity and overfishing" for the upcoming negotiations in the fall, said people familiar with the development.

The five-page restricted room document (RD/TN/RL/174) issued on 4 September, seen by the SUNS, appears to contain asymmetries in the provision of carve-outs to the big subsidizers who have allegedly contributed to the problem of global depletion of fish stocks on the one side, and special and differential treatment for developing and least developed countries, on the other, said people familiar with the text.

The text also brings into play the US proposal on forced labour in the fisheries sector in the section on notification and transparency requirements.

China had repeatedly rejected the inclusion of the issue of forced labour in the previous draft text.

The chair seems to have pushed the issue of non-specific fuel subsidies into a placeholder, suggesting that it remains an open issue.

The text contains specific notification and transparency requirements on fuel subsidies in paragraph C.3.

India has repeatedly argued that one of the major factors contributing to overcapacity and overfishing (OC&OF) is the subsidies provided by the big subsidizers, said several persons, who asked not to be identified.

Under Article A of the draft text concerning the OC&OF pillar, the chair has listed the draft disciplines, saying that, "No Member shall grant or maintain subsidies to fishing or fishing-related activities that contribute to overcapacity or overfishing."

The chair has listed the following subsidies that contribute to overcapacity or overfishing:

(a) subsidies to the construction, acquisition, modernization, renovation, or upgrading of vessels;
(b) subsidies to the purchase of machines and equipment for vessels (including fishing gear and engine, fish-processing machinery, fish-finding technology, refrigerators, or machinery for sorting or cleaning fish);
(c) subsidies to the purchase/costs of fuel, ice, or bait;
(d) subsidies to costs of personnel, social charges, or insurance;
(e) income support of vessels or operators or the workers they employ;
(f) price support of fish caught;
(g) subsidies to at-sea support; and
(h) subsidies covering operating losses of vessels or fishing or fishing-related activities.

In the subsequent paragraph A.1.1, the chair appears to have provided a carve-out to the big subsidizers like the European Union, the United States, Canada, Japan, Korea, Chinese Taipei, and now China, saying that, " ... if a subsidizing Member not falling under Article A.1.2 demonstrates in its regular notifications of fisheries subsidies under Article 25 of the SCM [Subsidies and Countervailing Measures] Agreement and Article 8 of the Agreement on Fisheries Subsidies that measures are implemented to maintain

the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level."

In previous meetings, several countries challenged this specific carve-out, saying that it is difficult to assess the measures cited in paragraph A.1.1.

The chair has listed several parameters for availing of this exception. The chair has proposed that a subsidizing Member invoking this provision must provide the following:

(i) catch data by species or group of species in the fishery for which the subsidy is provided;
(ii) status of the fish stocks in the fishery for which the subsidy is provided (e.g., overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared with any other Member or managed by an RFMO/A [regional fisheries management organization/arrangement]; and
(iii) conservation and management measures in place for the relevant fish stock.

He further clarified in the footnotes about what needs to be done in complying with the notifications.

However, going by the record of compliance of subsidies disciplines under the Agreement on Agriculture, it is common knowledge that the above conditions could be easily circumvented, said a person, who asked not to be quoted.

S&DT

On special and differential treatment (S&DT) provisions in Article B of the draft text, the chair, on the face of it, seems to have expanded the category of these provisions.

In paragraph B.1 (a), the chair says that, "A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its exclusive economic zone and in the area and for species under the competence of a relevant RFMO/A for a maximum of [7] years after the entry into force of these disciplines."

He says that, "A developing country Member intending to invoke this provision shall inform the Committee on Fisheries Subsidies in writing within one year of the date of entry into force of these disciplines."

The chair appears to have agreed to the developing countries' demand to exempt OC&OF subsidies for developing countries in the exclusive economic zone (EEZ), which is about 200 nautical miles or 230 miles.

However, he has limited the OC&OF subsidies to a period of only 7 years, while the developing countries apparently demanded a permanent exemption.

The chair has also listed specific provisions for developing countries such as:

1. Subsidies granted or maintained under subparagraph (a) shall be exempt from actions based on Article A.1 and Article 10 of the Agreement on Fisheries Subsidies for a period of two additional years after the end of the period referred to in subparagraph (a).
2. A developing country Member may seek an extension of the period referred to in subparagraph (b) through the Committee on Fisheries Subsidies, which shall take into account the specific circumstances of that Member. Sympathetic consideration shall be given to developing country Members that demonstrate concrete progress toward implementing Article A.1.

For artisanal fisherpersons, the chair has proposed in Article B.2 that "A developing country Member may grant or maintain the subsidies referred to in Article A.1 for low income, resource-poor and livelihood fishing or fishing related activities, up to [12][24] nautical miles measured from the baselines, including archipelagic baselines."

In Article B.3, the chair says, "A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities if its share of the annual global volume of marine capture production does not exceed [0.8] per cent as per the most recent published FAO data as circulated by the WTO Secretariat. A Member remains exempted until its share exceeds this threshold for three consecutive years. It shall be re-included in Article B.3 when its share of the global volume of marine capture production falls back below the threshold for three consecutive years."

For least developed countries (LDCs), the chair said that the prohibition on subsidies listed in the OC&OF pillar, "shall not apply to LDC Members. An LDC Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its EEZ and in the area and for species under the competence of a relevant RFMO/A for a maximum of [X] years after the entry into force of a decision of the UN General Assembly to exclude that Member from the "Least Developed Countries" category."

By including several placeholders in the draft text, the chair seems to have in mind to bring some new elements that may emerge from the negotiations, said people familiar with the draft text.

Notification & Transparency

In Article C of the draft text dealing with notification and transparency requirements, the chair said that, "The provisions of Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies shall apply to these disciplines, with the additions provided for in Articles A, B and C."

In paragraph C.2, the chair appears to endorse the US proposal on forced labour by saying: "Each Member shall notify the Committee on Fisheries Subsidies in writing on an annual basis of:

(a) any vessels and operators for which the Member has information that reasonably indicates the use of forced labour, along with relevant information to the extent possible; and
(b) a list of any agreements in force, or existing arrangements, for obtaining access to fisheries of another coastal Member or non-Member, and such notification shall consist of: (i) the titles of the agreements or arrangements; (ii) a list of their parties (this appears to be a specific carve-out for the European Union), and (iii) to the extent possible, the full text of the agreements or arrangements."

Fuel subsidies

On fuel subsidies, the chair states in paragraph C.3, "Notwithstanding Article 1 of the Agreement on Fisheries Subsidies, and to the extent possible, each Member shall notify the Committee on Fisheries Subsidies in writing on an annual basis of its fuel subsidies granted or maintained by a Member to fishing

and fishing related activities that are not specific within the meaning of Article 2 of the SCM Agreement."

In conclusion, the chair seems to have done a "balancing act" with the new draft text unlike his predecessor, the former Colombian Ambassador Santiago Wills, who is currently the director of the WTO's Council and Trade Negotiations Committee division.

Full draft text

The full draft text is highlighted below:

"DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING, AND RELATED ELEMENTS

Note: As Chair of the Negotiating Group on Rules (NGR), I had indicated the need to form a basis for the NGR's text-based discussions in the fall with respect to disciplines on subsidies contributing to overcapacity and overfishing, and related elements.

This document is intended to be used as the starting point for the text-based phase, on which Members can build on and adjust. As such, this document is without prejudice to any Member's positions or views, whether or not reflected herein. Document RD/TN/RL/174/Add.1 provides detailed explanations of the provisions in this draft text.

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ARTICLE A: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING

A.1 [a] No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing. For the purpose of this paragraph, subsidies that contribute to overcapacity or overfishing include:

(a) subsidies to construction, acquisition, modernisation, renovation or upgrading of vessels;

(b) subsidies to the purchase of machines and equipment for vessels (including fishing gear and engine, fish- processing machinery, fish-finding technology, refrigerators, or machinery for sorting or cleaning fish);

(c) subsidies to the purchase/costs of fuel, ice, or bait;

(d) subsidies to costs of personnel, social charges, or insurance;

(e) income support of vessels or operators or the workers they employ;

(f) price support of fish caught;

(g) subsidies to at-sea support; and

(h) subsidies covering operating losses of vessels or fishing or fishing related activities.

A.1.1

A subsidy is not inconsistent with Article A.1 if a subsidizing Member not falling under Article A.1.2 demonstrates in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level. [b] In addition to what is required under Article C.1, a subsidizing Member invoking this provision must provide the following:

(i) catch data by species or group of species in the fishery for which the subsidy is provided [c];

(ii) status of the fish stocks in the fishery for which the subsidy is provided (e.g., overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared with any other Member or managed by an RFMO/A; and

(iii) conservation and management measures in place for the relevant fish stock.

[FOOTNOTES]: [a] For greater clarity, Article A.1 does not apply to subsidies to the extent they regard stocks that are overfished.

[b] For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.

[c] For multi-species fisheries, a Member instead may provide other relevant and available catch data.

A.1.2

(a) The [X] largest providers of fisheries subsidies by annual aggregate value according to [...] shall be deemed to be providing subsidies to fishing or fishing related activities that contribute to overcapacity and overfishing.

(b) Notwithstanding subparagraph (a), a Member falling under that subparagraph shall not be deemed to be providing subsidies that contribute to overcapacity or overfishing if the Member demonstrates through a notification immediately after a subsidy is designed and in effect, and thereafter in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies, that measures are implemented to maintain stocks in the relevant fishery or fisheries at a biologically sustainable level. [b] In addition to what is required under Article C.1, a subsidizing Member invoking this provision must provide the following:

(i) catch data by species or group of species in the fishery for which the subsidy is provided [c];

(ii) status of the fish stocks in the fishery for which the subsidy is provided (e.g., overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared [d] with any other Member or are managed by an RFMO/A;

(iii) conservation and management measures in place for the relevant fish stock; and

(iv) fleet capacity in the fishery for which the subsidy is provided.

Member's jurisdiction (whether solely or as one of several other conditions). [e] (b) [PLACEHOLDER: POSSIBLE

FLEXIBILITY FOR SUBPARAGRAPH (a)]

ARTICLE B: SPECIAL AND DIFFERENTIAL TREATMENT

B.1 (a) A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its exclusive economic zone and in the area and for species under the competence of a relevant RFMO/A for a maximum of [7] years after the entry into force of these disciplines. A developing country Member intending to invoke this provision shall inform the Committee on Fisheries Subsidies in writing within one year of the date of entry into force of these disciplines.

[FOOTNOTES]: [d] The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

[e] The mere fact that a subsidy is granted or maintained to vessels or operators that may be engaged in fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction (e.g., fishing in a nearby Member's exclusive economic zone (EEZ) pursuant to traditional or historical practices or arrangements, including relating to migratory stocks) shall not for that reason alone be considered to be contingent upon, or tied to, such fishing or fishing related activities.

(b) Subsidies granted or maintained under subparagraph (a) shall be exempt from actions based on Article A.1 and Article 10 of the Agreement on Fisheries Subsidies for a period of two additional years after the end of the period referred to in subparagraph (a).

(c) A developing country Member may seek an extension of the period referred to in subparagraph (b) through the Committee on Fisheries Subsidies, which shall take into account the specific circumstances of that Member. Sympathetic consideration shall be given to developing country Members that demonstrate concrete progress toward implementing Article A.1.

B.2 A developing country Member may grant or maintain the subsidies referred to in Article A.1 for low income, resource-poor and livelihood fishing or fishing related activities, up to [12][24] nautical miles measured from the baselines, including archipelagic baselines.

B.3 A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities if its share of the annual global volume of marine capture production does not exceed [0.8] per cent as per the most recent published FAO data as circulated by the WTO Secretariat. A Member remains exempted until its share exceeds this threshold for three consecutive years. It shall be re-included in Article B.3 when its share of the global volume of marine capture production falls back below the threshold for three consecutive years.

B.3 ALT A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities if its subsidies to fishing and fishing related activities do not exceed the annual aggregate value of [USD X] as per [...].

B.4 The prohibition under Article A.1 shall not apply to LDC Members. An LDC Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its EEZ and in the area and for species under the competence of a relevant RFMO/A for a maximum of [X] years after the entry into force of a decision of the UN General Assembly to exclude that Member from the "Least Developed Countries" category.

B.5 While applying Article B, a Member shall endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing.

B.6 [PLACEHOLDER: POSSIBLE CRITERION-BASED EXCLUSION FROM SDT] ARTICLE

C: NOTIFICATION AND TRANSPARENCY

C.1 The provisions of Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies shall apply to these disciplines, with the additions provided for in Articles A, B and C.

C.2 Each Member shall notify the Committee on Fisheries Subsidies in writing on an annual basis of:

(a) any vessels and operators for which the Member has information that reasonably indicates the use of forced labour, along with relevant information to the extent possible; and

(b) a list of any agreements in force, or existing arrangements, for obtaining access to fisheries of another coastal Member or non-Member, and such notification shall consist of: (i) the titles of the agreements or arrangements; (ii) a list of their parties; and (iii) to the extent possible, the full text of the agreements or arrangements.

A Member may meet this obligation by providing an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information.

C.3 Notwithstanding Article 1 of the Agreement on Fisheries Subsidies, and to the extent possible, each Member shall notify the Committee on Fisheries Subsidies in writing on an annual basis of its fuel subsidies granted or maintained by a Member to fishing and fishing related activities that are not specific within the meaning of Article 2 of the SCM Agreement.

ARTICLE D: OTHER OVERCAPACITY AND OVERFISHING PROVISIONS

D.1 [PLACEHOLDER: POSSIBLE SUBSTANTIVE PROVISION ON NON-SPECIFIC FUEL SUBSIDIES] D.2 [PLACEHOLDER FOR OTHER POSSIBLE PROVISIONS]"

(SUNS 9851)

Doha fisheries chair provides reasons for his draft proposals

In an Explanatory Note accompanying his new draft text, the chair of the Doha fisheries subsidies negotiations at the World Trade Organization has provided the reasons for his proposals in the text.

by D. Ravi Kanth

NEW DELHI: The chair of the Doha fisheries subsidies negotiations at the World Trade Organization, Ambassador Einar Gunnarsson of Iceland, has suggested several changes for tackling the subsidies of the big subsidizers in the overcapacity and overfishing pillar to demonstrate that measures are being implemented to maintain at a biologically sustainable level stocks in the relevant fishery or fisheries, as well as on special and differential treatment (SDT) provisions for developing countries, said people familiar with the explanatory note issued along with his draft text.

On 4 September, the chair issued a draft text (RD/TN/RL/174) on the most critical pillar of subsidies contributing to overcapacity and overfishing that are being allegedly provided by the big subsidizers like the European Union, the United States, Canada, Japan, Korea, Chinese Taipei, and China (see SUNS #9850).

On the face of it, the chair's draft text seems to break some new ground, but asymmetries seem to persist.

In a restricted explanatory note (RD/TN/RL/174/Add.1) issued along with the draft text, seen by the SUNS, the chair explained the reasons for the proposals contained in the draft text.

The chair also appears to have introduced new categories on special and differential treatment provisions for developing countries, who are in various stages of developing their nascent fisheries sectors.

The draft text also contains some special provisions for the hundreds of millions engaged in livelihood fishing in developing countries.

In the explanatory note, the chair says, "Under Article A.1.2 (on the carve-outs provided to the big subsidizers), the largest providers of fisheries subsidies, identified on the basis of the annual aggregate value of their fisheries subsidies, would be deemed to provide subsidies that contribute to overcapacity and overfishing."

He says, "The consequence of this deeming is that these Members would bear the burden of demonstrating, through a notification to be submitted immediately after a subsidy is designed and in effect, that measures are implemented to maintain at a biologically sustainable level the stocks in the relevant fishery or fisheries."

Further, according to the chair, "adding to the strictness of Article A.1.2, the content of the immediate "demonstration" notification that it provides for is more extensive than the periodic notification provided for in Article A.1.1. In addition, the notification under Article A.1.2 would need to contain all of the information referred to in Article A.1.1 plus information on the fleet capacity in the fishery for which the subsidy is provided."

The chair says that the draft disciplines set out in the text are based on a "hybrid approach" combining a statement of the prohibition and a list of presumptively prohibited fisheries subsidies, along with a qualification to the prohibition based on sustainability elements.

The chair maintained that "the aim and operation of the hybrid approach is to ensure that sustainability measures factor in as one important consideration in the granting and maintaining of subsidies, and that decisions on subsidization likewise should factor into sustainability considerations."

"The subsidies and sustainability measures would be the subject of a demonstration that sustainability measures were in place for the fish stocks in respect of which the subsidies were provided," he said.

As previously reported in the SUNS, Article A.2, which appears to be aimed at China, contains "a prohibition on subsidies contingent on fishing outside the subsidizing Member's jurisdiction."

"This provision is a standalone discipline," the chair said.

It states that "no member shall grant or maintain subsidies contingent upon, or tied to, actual or anticipated fishing or fishing-related activities in areas beyond the subsidizing Member's jurisdiction."

The chair also included a placeholder for "possible flexibility" in respect of the prohibition, in Article A.2 (b), that looks like a flexibility for the European Union, said a person familiar with the draft text.

Article B of the draft text deals with special and differential treatment (SDT) provisions for developing country members in relation to the draft disciplines on subsidies contributing to overcapacity and overfishing.

According to the chair, "Article B.1 provides three types of SDT that would be available to developing country Members. The provisions of Articles B.1(a) and B.1(b), taken together, are similar to Article 5.5(a) in W20."

The chair maintained that "Article B.1(a) provides for a transition period for a maximum number of [7] years available to all developing country Members. During the transition period, certain subsidies maintained by such Members to fishing and fishing-related activities in their EEZ [Exclusive Economic Zone] or in the area and for species under the competence of a relevant RFMO/A [regional fisheries management organization/arrangement] would be exempt from the prohibition in Article A.1 (and thus not subject to the sustainability qualifications in Article A.1.1 and Article A.1.2)."

Article B.2, according to the chair, "addresses the call from numerous Members to exempt from the disciplines developing country Members' subsidies to artisanal and small-scale fishing."

He said that "it has been evident in recent discussions that Members' views remain divergent on how best to define and provide SDT for artisanal and small-scale fishing. Proposals seeking to provide some guidance in terms of characteristics of such fishing could be further explored."

Article B.4 in the draft text, the chair said, "provides for special and

differential treatment specifically for LDC Members."

Ambassador Gunnarsson said that Article B.6 "is a placeholder for a provision that would exclude certain developing country Members from the scope of special and differential treatment."

Here again, China appears to be the major target.

According to the chair, "Three options have been proposed as a basis for identifying such Members, should such a provision be included: (a) a Member's share of global marine capture production; (b) the geographic area in which a member conducts fishing activities; and (c) a voluntary opt-out by developing country Members not intending to avail themselves of SDT."

The chair acknowledged that "views also diverge regarding whether such a provision should be included in the disciplines at all."

He urged Members "to consider the relationship between developing country Members falling under Article A.1.2 and the various SDT provisions."

In Article C, which sets forth notification and transparency provisions, the chair inserted in Article C.2(a) the requirement for indicating the use of forced labour by vessels or operators.

This issue was brought into the fisheries subsidies negotiations by the United States even though it is not part of the multilateral trade disciplines until now.

According to the chair, Article C.2 (b) pertains to information about government-to-government fisheries access agreements implemented by the European Union.

Even though the government-to-government fisheries access agreements contain subsidies, they seem to be downplayed, said people familiar with the draft text.

Article C.3 deals with information about non-specific fuel subsidies that are allegedly being treated with "kid gloves".

Explanatory Note

The full text of the chair's explanatory note is as follows:

"Chair's explanatory note accompanying RD/TN/RL/174

INTRODUCTION

This addendum provides background, context, and explanations for the document "Draft disciplines on subsidies contributing to overcapacity and overfishing, and related elements", which I have circulated today in document RD/TN/RL/174. As indicated in its cover note, I suggest we use that document as the starting point for our text-based work this fall.

1. BACKGROUND AND CONTEXT

Members are aware that WTO Ministers, through their Decision in document WT/MIN(22)/33 adopting the Agreement on Fisheries Subsidies at the WTO 12th

Ministerial Conference (MC12), mandated the Negotiating Group on Rules (NGR) to continue its work. In particular, Ministers instructed the NGR to negotiate on the issues in documents WT/MIN(22)/W/20 (W20) and WT/MIN(21)/W/5 (W5) that were left outstanding after MC12, with a view to making recommendations to the Thirteenth WTO Ministerial Conference (MC13) for additional provisions that would achieve a comprehensive agreement on fisheries subsidies. Members subsequently made clear in a variety of fora, starting with the retreat for Heads of Delegation held in Evian in October 2022, that the main focus of this "second wave" of negotiations should be to develop disciplines on subsidies contributing to overcapacity and overfishing.

Since taking up the Chair of the NGR in January this year, bearing in mind the MC12 mandate, I have been structuring the Group's work with a view to establishing as soon as possible an initial textual basis that we could use as the starting point for building a consensus text for adoption by Ministers next February at MC13. In this connection, I have consistently expressed the view that to be in a position to meet this deadline, we need to begin text-based negotiations as soon as we resume work after the summer break. During the last two Fish Weeks before the break, the Negotiating Group focused on discussing proposals of elements for that text-based work submitted by various Members and groups.

My communication of 31 July foreshadowed the circulation of a starting point document before our resumption of work in the fall.

To aid all of our reflections on elements for such a starting point document, my 31 July communication to Members included an annex containing a so-called "menu of options". This annex was aimed at encouraging Members to explore commonalities and possible overlaps among the elements in the documents before us. To this end it groups together similar concepts from the different proposals that have been received and from other relevant documents, particularly W20 and W5. I hope that the annex is useful to your own reflections about all of those documents, as well as to your consideration of the starting point document I have circulated today.

In putting the starting point document together, I have reflected on the various elements and approaches before us which, based on the Negotiating Group's discussions, appear to enjoy substantial support. As indicated in my 31 July communication, my intention has not been to try to squeeze every proposal in its entirety into the document, but rather to establish a structured foundation for Members to adjust through your further inputs as we progress in the negotiating process. Thus, every textual element in the document should be very familiar to

all of you, even if the drafting does not always simply replicate language contained in original proposals or other documents. You will note that in a few places the document either provides an alternative textual option or contains a simple placeholder in lieu of specific language.

I have circulated the document in the RD/TN/RL (room document) series. Using this series reflects my intended purpose of the document as a basic starting point for our text-based discussions, and not in any way as a suggested final outcome.

I would emphasize here (which in any event goes without saying) that nothing in the document is agreed. Furthermore, it is absolutely clear that the document is without prejudice to any Member's position on any issue, regardless of whether or how the document may reflect that issue. The document is meant only to serve as a starting point for a

more focused phase of our work, and it is my hope that Members will amend it to progressively build consensus through that work.

The remainder of this addendum is intended to assist Members to understand the specific content of the document in RD/TN/RL/174. It thus provides explanations of each provision of the document, including in relation to corresponding provisions in W20 and W5, i.e., the immediately preceding versions of the draft disciplines on the outstanding issues.

2. DETAILED EXPLANATION OF THE PROVISIONS OF RD/TN/RL/174

ARTICLE A: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING

Article A.1, Article A.1.1, Article A.1.2, and Article A.1.3

Article A.1 contains draft language for the core disciplines on subsidies contributing to overcapacity and overfishing. The drafting is based on a "hybrid approach" combining a statement of the prohibition and a list of presumptively prohibited fisheries subsidies, along with a qualification to the prohibition based on sustainability elements. The basic structure of the discipline is thus the same as in the hybrid approach in the corresponding provisions of W20 and W5. As was explained in the addendum to W20 (WT/MIN(22)/W/20/Add.1), the aim and operation of the hybrid approach is to ensure that sustainability measures factor in as one important consideration in the granting and maintaining of subsidies, and that decisions on subsidization likewise should factor into sustainability considerations. The subsidies and sustainability measures would be the subject of a demonstration that sustainability measures were in place for the fish stocks in respect of which the subsidies were provided. This demonstration process would begin with notifications to the Committee on Fisheries Subsidies.

Based on our second wave discussions so far, this type of hybrid approach for the core discipline on subsidies contributing to overcapacity and overfishing appears to have the broadest support among the different proposals. That said, the provisions in Article A.1 and its subparagraphs contain various modifications to the approach in W20 and W5. These modifications, which draw on proposals and suggestions from Members, are aimed at addressing a broad-based call to tighten the core discipline relative to that previous drafting, particularly in respect of the largest subsidizers.

Similar to the approach in Article 5.1 of W20 and W5, the disciplines in Article A.1 combine a prohibition in the chapeau and an illustrative list of certain presumptively prohibited subsidies, with sustainability-based qualifications to the prohibition in Articles A.1.1 and A.1.2. These provisions would be operationalized, in part, through Article A.1.3 which elaborates certain aspects of the Committee review process.

In more detail, the main body of Article A.1, including sub-items (a) through (h), is identical to the counterpart provision in W20. This provision consists of a chapeau containing the statement of the prohibition on subsidies that contribute to overcapacity and overfishing, and an illustrative list of certain specific types of such subsidies. In our discussions to date, most Members continue to support the approach of stating the prohibition and then having an illustrative list of types of subsidies presumed to contribute to overcapacity and overfishing. While some Members have suggested amending in different ways the indicative list that appeared in W20, or splitting it into a closed list of most harmful subsidies and an indicative list of other subsidies that contribute to overcapacity and overfishing, these ideas have not yet been explored in detail and so are not included in the starting point document.

Furthermore, some proposals call for a list-based approach as opposed to a hybrid approach. It will be for Members, in the forthcoming text-based discussions, to determine whether to maintain the overall approach reflected in Article A.1, and how to adjust the drafting.

Article A.1 is qualified by, and thus needs to be read together with, Articles A.1.1 and A.1.2. Between them, these latter provisions would establish a two-tiered sustainability-based qualification to the prohibition in Article A.1.

Article A.1.1, which creates the first tier of this mechanism, is of general application. This Article provides that a subsidy is not inconsistent with Article A.1 if the subsidizing Member demonstrates that measures are implemented to maintain the relevant fish stocks at a biologically sustainable level. This language is similar to that in the counterpart provision of Article 5.1.1 of W20 and W5. Article A.1.1 is further elaborated, however, by providing that the demonstration is to be made through the Member's regular subsidy notification under the Agreement on Subsidies and Countervailing Measures as well as Article 8 of the Agreement on Fisheries Subsidies, and by listing certain information that would have to be provided: catch data for the fish stock in question, status of the stock, and conservation and management measures in place for it.

The second tier of the mechanism for using the sustainability-based qualification to Article A.1 is found in Article A.1.2. This provision has been introduced on the basis of a widespread call, and several proposals, to apply to the largest subsidizers a stricter sustainability test than that in W20 and W5. In particular, Article A.1.2 aims to address the concern voiced by numerous Members that Article 5.1.1 in W20 and W5 would not have changed the status quo in terms of the total amount of fisheries subsidies being provided.

Article A.1.2 is entirely new, with no counterpart in W20 or W5. However, the ideas and drafting draw from various Member proposals. Under Article A.1.2 the largest providers of fisheries subsidies, identified on the basis of the annual aggregate value of their fisheries subsidies, would be deemed to provide subsidies that contribute to overcapacity and overfishing. The consequence of this deeming is that these Members would bear the burden of demonstrating, through a notification to be submitted immediately after a subsidy is designed and in effect, that measures are implemented to maintain at a biologically sustainable level the stocks in the relevant fishery or fisheries. Adding to the strictness of Article A.1.2, the content of the immediate "demonstration" notification that it provides for is more extensive than the periodic notification provided for in Article A.1.1. In addition, the notification under Article A.1.2 would need to contain all of the information referred to in Article A.1.1 plus information on the fleet capacity in the fishery for which the

subsidy is provided.

An issue that arises in connection with Article A.1.2 is the methodology that would be used to identify the largest subsidizers. While as presented in the starting point document this would be done based on the annual aggregate value of each Member's subsidization, certain Members have proposed alternative approaches such as each Member's annual aggregate amount of fisheries subsidies calculated as a percentage of the total value of its marine catch.

A related key practical issue that Members would need to resolve to make Article A.1.2 operational, regardless of the specific methodology for identifying the top subsidizers, is to identify and agree on the source of information to use in that methodology. The draft reflects this through the bracketed phrase "according to [...]".

A further issue that would need to be negotiated is the specific number of top subsidizers to which Article A.1.2 would apply. This is reflected by the reference to "the [X] largest providers of fisheries subsidies".

The Committee's review of the notifications referred to in Articles A.1.1 and A.1.2 would form part of the "demonstration" process by allowing other Members to pose questions and seek clarifications about the notifications. Article A.1.3, does not have a counterpart in Article 5 of W20 or W5, but draws from recent proposals. It reinforces this Committee review process by explicitly providing for concerned Members to seek relevant information from subsidizing Members and establishing rules for the subsidizing Members' responses. Article A.1 retains certain other elements contained in footnotes to the Agreement on Fisheries Subsidies and reflected in W20. First is footnote "a" to Article A.1 of the starting point document, which replicates footnote 12 of W20. This footnote clarifies that this article (the core disciplines on subsidies contributing to overcapacity) does not apply to subsidies to the extent they regard stocks that are overfished. It is aimed at addressing a concern raised by some Members that a subsidy for fishing a stock that was recognized as being overfished could be permitted under Article 4.3 of the Agreement on Fisheries Subsidies but, because in such circumstances it would be impossible to demonstrate that measures are in place to maintain an overfished stock at a biologically sustainable level, the same subsidy could be prohibited under Article A.1. Second is footnote "b", which is identical to footnote 11 of the Agreement on Fisheries Subsidies, and which defines "biologically sustainable level". Third is footnote "c", which is identical to footnote 15 of the Agreement on Fisheries Subsidies, concerning catch data for multi-species fisheries. Fourth is footnote "d", which is identical to footnote 14 of the Agreement on Fisheries Subsidies, which defines shared stocks.

Article A.2

Article A.2 contains a prohibition on subsidies contingent on fishing outside the subsidizing Member's jurisdiction. This provision is a standalone discipline, as was the case for the counterpart provision of W20.

Article A.2(a) contains the statement of the prohibition. The language of this provision, including footnote "e" attached thereto, is identical to that of the corresponding provision in W20.

Article A.2(b) takes the form of a bracketed placeholder for possible flexibility in respect of the prohibition in Article A.2(a). The use of a placeholder here reflects the fact that Members hold different views as to whether and what kind of flexibility from such a prohibition might be appropriate, and how any such flexibility should operate. Some Members consider that flexibility from the prohibition in A.2(a) should be provided for non-collection from operators or vessels of government-to-government access fees, subject to sustainability requirements (as was the case in W20). Other Members consider that such a prohibition should not be free- standing, but instead should be treated the same as any other subsidies listed in Article A.1, including (as was the case in W5) being eligible for the sustainability-based qualifications to the prohibition. Some Members consider that there should be no flexibility in respect of this prohibition.

ARTICLE B: SPECIAL AND DIFFERENTIAL TREATMENT

Article B contains provisions on special and differential treatment (SDT) for developing country Members in relation to the draft disciplines on subsidies concerning overcapacity and overfishing. These SDT provisions include certain elements from the corresponding provisions in W20 and W5, as well as additional elements on SDT reflected in some of the recent proposals from Members.

Article B.1

Article B.1 provides three types of SDT that would be available to developing country Members. The provisions of Articles B.1(a) and B.1(b), taken together, are similar to Article 5.5(a) in W20.

Article B.1(a) provides for a transition period for a maximum number of [7] years available to all developing country Members. During the transition period, certain subsidies maintained by such Members to fishing and fishing related activities in their EEZ or in the area and for species under the competence of a relevant RFMO/A would be exempt from the prohibition in Article A.1 (and thus not subject to the sustainability qualifications in Article A.1.1 and Article A.1.2). The brackets around the duration of the transition period reflects that Members' views on this point have not yet been fully developed and explored. The applicability of this transition period would be conditioned on whether the Member intending to invoke this provision informs the Committee of such intention in writing within one year of the entry into force of the new disciplines. This condition also appeared in Article 5.5(a) of W20.

Article B.1(b) creates a further period of flexibility through a two-year peace clause that would be available after the transition period to all developing Members that had notified their intention to avail themselves of the transition period pursuant to Article B.1(a). During the period of the peace clause, a developing country Member would be obliged to implement Article A.1 but would be exempt from dispute settlement in respect of obligations under that provision. As noted, the drafting of this peace clause is similar to language in Article 5.5(a) of W20.

Unlike Articles B.1(a) and B.1(b), Article B.1(c) has no counterpart in W20 but draws from recent proposals. This provision would establish a mechanism by which a developing country Member would be able to request the Committee

to grant an extension of the peace clause. In considering such a request, the Committee would take into account the specific circumstances of the Member in question, and would give sympathetic consideration to developing country

Members that demonstrate concrete progress toward implementing Article A.1. Subparagraph (c) is included to address proposals suggesting that transition periods should be linked to helping developing country Members transition to sustainable fishing.

Article B.2

Article B.2 addresses the call from numerous Members to exempt from the disciplines developing country Members' subsidies to artisanal and small-scale fishing.

This provision is identical to the counterpart provision in W20, containing language describing the fishing in question as "low income, resource poor and livelihood fishing", and including the same bracketed options (12 or 24 nautical miles from the baselines) for the precise geographical limit within which this exemption would apply.

It has been evident in recent discussions that Members' views remain divergent on how best to define and provide SDT for artisanal and small-scale fishing. Proposals seeking to provide some guidance in terms of characteristics of such fishing could be further explored.

Article B.3

Article B.3, which is identical in substance to the counterpart provision of W20, would exempt from the disciplines in Article A.1 developing country Members with no more than a specified (de minimis) share of the annual global volume of marine capture production. This provision retains the bracketed figure in W20 of no more than 0.8% of annual global marine capture production as the de minimis threshold.

Article B.3 ALT is a new, alternative de minimis formulation. This formulation addresses proposals to exclude from the disciplines in Article A.1 developing country Members whose absolute level of subsidies provided to fishing or fishing related activities is below a specified amount. The proponents of this type of approach have signalled openness to discussing the precise amount of such a de minimis subsidization threshold. To reflect this, the text contains a placeholder for this subsidization amount. A central practical issue that Members would need to resolve under this formulation, as is the case for Article A.1.2, would be to identify and agree on the source of information to use in calculating each relevant Member's absolute amount of the subsidization. This is indicated in the phrase "as per [...]" in this provision.

Article B.4

Article B.4 provides for special and differential treatment specifically for LDC Members. This provision is essentially the same as the counterpart provisions in W20 and W5, although the format differs slightly.

Article B.5

Article B.5 is identical to the counterpart provision in W20. It reflects a widely-held view that Members availing themselves of SDT provisions should nevertheless aim to provide subsidies in a sustainable manner, with a view to avoiding contributing to overcapacity and overfishing.

Article B.6

Article B.6 is a placeholder for a provision that would exclude certain developing country Members from the scope of special and differential treatment. Three options have been proposed as a basis for identifying such Members, should such a provision be included: (a) a Member's share of global marine capture production; (b) the geographic area in which a Member conducts fishing activities; and (c) a voluntary opt-out by developing country Members not intending to avail themselves of SDT. Views also diverge regarding whether such a provision should be included in the disciplines at all.

Furthermore, Members would need to consider the relationship between developing country Members falling under Article A.1.2 and the various SDT provisions.

Given the multiplicity of views on this issue, further discussion will be required. The placeholder in Article B.6 is intended to invite such discussion.

ARTICLE C: NOTIFICATION AND TRANSPARENCY

Article C sets forth notification and transparency provisions. Article C.1 clarifies that in addition to the specific notification obligations set out in these disciplines, Members are required to comply with their notification obligations under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies, as consistent with the approach in W20 and W5.

Article C.2(a) pertains to information indicating the use of forced labour by vessels or operators. This provision is identical to its counterpart in W20 and W5. Article C.2(b) pertains to information about government-to-government fisheries access agreements or arrangements. This provision is identical to its counterpart in W20.

Article C.3 covers information about non-specific fuel subsidies. This provision is identical to its counterpart in W20 and W5.

ARTICLE D: OTHER OVERCAPACITY AND OVERFISHING PROVISIONS

Article D provides space for insertion of other issues concerning subsidies contributing to overcapacity and overfishing that are not addressed elsewhere. The one issue referred to in the placeholder in Article D.1 is non-specific fuel subsidies. This issue was extensively debated and was dealt with differently in W5 and W20.

Article D.2 provides space for other possible provisions Members may wish to include. For instance, in the second wave of negotiations, some Members have also proposed specific disclaimer language regarding their rights under UNCLOS.

Reference to UNCLOS remains a sensitive issue for certain Members, however, and so this issue is not referred to in Article D. In this connection, Members are invited to consider the disclaimer language in Article 11.3 of the Agreement on Fisheries Subsidies, the scope of which appears to be relatively broad." *(SUNS 9851)*

Third World ECONOMICS No. 778, 1-15 September 2023

UN body criticizes North states' refusal to waive COVID-19 vaccine IPRs

A United Nations treaty body has criticized several State parties in the North over their "persistent refusal" to agree to a waiver of the TRIPS Agreement regarding COVID-19 pandemic protections, vaccines, treatments, and healthcare technologies.

by Kanaga Raja

PENANG: The United Nations Committee on the Elimination of Racial Discrimination (CERD) has called on State parties in the North, in particular Germany, Switzerland, the United Kingdom and the United States, to waive intellectual property rights (IPRs) on COVID-19 pandemic protections, vaccines, treatments, and healthcare technologies.

In a Decision adopted on 30 August, the Committee stressed that the persistent refusal to agree to a waiver of the TRIPS Agreement or to take other measures to the same effect, raises concerns regarding the obligations of State parties under the International Convention on the Elimination of All Forms of Racial Discrimination as well as other international human rights guarantees.

The Committee on the Elimination of Racial Discrimination, comprising 18 independent human rights experts drawn from around the world, monitors the 182 States parties' adherence to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The Decision on "the lack of equitable and non-discriminatory access to COVID-19 vaccines" was adopted under the Committee's early warning and urgent action procedures, which aim to consider situations that might escalate into conflicts in order to take appropriate preventive actions to avoid full-scale violations of human rights.

The Decision was endorsed by Ms Ashwini K. P., the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

In its Decision adopted on 30 August, the Committee expressed concern that COVID-19 remains a serious public health issue with devastating negative impacts that are falling disproportionately on individuals and groups vulnerable to racial discrimination, in particular persons of African or Asian descent, those belonging to national or ethnic minorities, Roma communities, and indigenous peoples.

Citing the latest data from the World Health Organization (WHO), the Committee said about 32 per cent of the global population has received at least one booster or additional dose of vaccine.

However, in developing countries such as Gabon, Papua New Guinea, Burundi and Madagascar, the proportion is less than 1 per cent.

In its Decision, the Committee reiterated its earlier statement of 25 April 2022 ("Statement 2" of 2022) on the lack of equitable and non-discriminatory access to COVID-19 vaccines.

In the statement issued during its 106th session held from 11-29 April 2022, the Committee had expressed deep concern that "the vast majority of COVID-19 vaccines have been administered in high- and upper-middle-income countries and that, as of April 2022, only 15.21% of the population of low-income countries has received even one vaccine dose, creating a pattern of unequal distribution within and between countries that replicates slavery and colonial-era racial hierarchies; and which further deepens structural inequalities affecting vulnerable groups protected under the Convention."

The statement had noted that the States parties of Germany, Switzerland, and the United Kingdom of Great Britain and Northern Ireland had "opposed a request spearheaded by India and South Africa in October 2020 at the WTO to temporarily waive intellectual property protections on healthcare technologies concerning COVID-19 prevention, containment or treatment imposed by the TRIPS Agreement (later revised in May 2021)", and that in addition, Germany, Switzerland, and the United Kingdom of Great Britain and Northern Ireland "have failed to mandate technology transfers by nationally based pharmaceutical companies that insist on guarding their intellectual property monopolies on COVID-19 healthcare technologies".

The Committee further noted that while the State party of the United States of America had "declared support for a narrow vaccines-only waiver, it has failed to use all its available tools, including activating its Defense Production Act, to mandate COVID-19 healthcare technology transfers from nationally based pharmaceutical companies."

In its statement on 25 April 2022, the Committee had reiterated its call on States parties, in particular Germany, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, "to combat the COVID-19 pandemic guided by the principle of international solidarity through international assistance and cooperation, including by supporting the proposal of a comprehensive temporary waiver on the provisions of the TRIPS Agreement, and taking all additional national and multilateral measures that would mitigate the disparate impact of the pandemic and its socioeconomic consequences on groups and minorities protected under the Convention."

It is against this backdrop that the Committee on 30 August 2023 joined the UN High Commissioner for Human Rights in urging States parties, in particular Germany, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, "to not allow economic interests and corporate commitments to be prioritized over respect for human rights, and instead to prioritize the safety and protection of vulnerable and marginalized populations through non-discriminatory policies consistent with ICERD."

Text of CERD decision

The full text of the Committee's Decision on the lack of equitable and non-discriminatory access to COVID-19 vaccines is highlighted below:

"The Committee on the Elimination of Racial Discrimination, meeting in Geneva at its hundred-tenth session, from 7 to 31 August 2023;

Acting under its Early Warning and Urgent Action Procedure;

Recalling its Statement of 7 August 2020 on the Coronavirus (COVID-19) pandemic and its implications under the International Convention on the Elimination of All Forms of Racial Discrimination;

Recalling its Statement 2 (2022) of 25 April 2022 on the lack of equitable and non-discriminatory access to COVID-19 vaccines, calling on State parties to vote in the World Trade Organization on a waiver to provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) regarding COVID-19 pandemic protections, vaccines, treatments, or healthcare technologies;

Recalling also the open letter from the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the World Trade Organization's Twelfth Ministerial Conference, of 13 June 2022, in relation to consideration of a waiver of certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19;

Concerned that COVID-19 remains a serious public health issue with devastating negative impacts that are falling disproportionately on individuals and groups vulnerable to racial discrimination as defined in Article 1 of the Convention, in particular persons of African or Asian descent, those belonging to national or ethnic minorities, Roma communities, Indigenous Peoples, non-citizens, living in both the global North and South countries;

Noting that the current challenges of inequality can be significantly mitigated by sharing access to intellectual property rights to life-preserving patents to vaccines, treatments and related technologies which are currently reserved by a few countries in the global North;

Concerned that the Ministerial Decision on the TRIPS Agreement, adopted on 17 June 2022 at the twelfth Ministerial Conference of the World Trade Organization, does not go far enough to address the high rates of COVID-19 morbidity and mortality worldwide among the people and groups most exposed to racial discrimination;

Noting that the State parties referred to in Statement 2 (2022), that is Germany, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, are in a specifically powerful situation when it comes to waiving intellectual property rights under the TRIPS Agreement or taking other measures to address the lack of equitable and non-discriminatory access to COVID-19 vaccines;

Noting further that the persistent refusal to vote for a waiver of the TRIPS Agreement or to take other measures to the same effect, raises concerns regarding their obligations under the Convention as well as other international human rights guarantees;

Reiterates its Statement 2 (2022) of 25 April 2022 on the lack of equitable and non-discriminatory access to COVID-19 vaccines; Joins the UN High Commissioner for Human Rights, in urging States parties, in particular Germany, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, to not allow economic interests and corporate commitments to be prioritized over respect for human rights, and instead to prioritize the safety and protection of vulnerable and marginalized populations through non-discriminatory policies consistent with ICERD;

Calls upon States parties to prioritize human rights concerns and to incorporate strict human rights guarantees, including a mechanism that commits governments to suspend intellectual property rights in a health crisis, in the draft pandemic prevention, preparedness and response accord currently under negotiation at the World Health Organisation;

Calls upon States parties in the global North to provide resources to enable poorer States to satisfy the core medical capacities that they are expected to have in place under the International Health Regulations and to enable vaccines, relevant medicines and other necessary equipment and supplies to be available to all in a non-discriminatory manner;

Requests Germany, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America to respond to the present Decision, by providing information on the measures taken to waive intellectual property protections for COVID-19 vaccines or other measures taken in order to address the high rates of COVID-19 morbidity and mortality worldwide among individuals and groups most exposed to racial discrimination." *(SUNS 9846)*

Third World ECONOMICS No. 778, 1-15 September 2023

Can oil be kept in the ground?

While the Ecuadorean people, in a historic referendum, had decided to halt oil exploitation in the Yasuni national park in the Amazon, implementation of the decision is facing unexpected resistance, both internally and abroad.

*by Roberto Bissio**

MONTEVIDEO: The Ecuadorean people decided by a decisive majority that the Yasuni oil reserves in the Amazon should not be exploited, due to the negative impact of fossil fuel extraction over biodiversity, the livelihood of indigenous communities and world climate, but implementation is facing unexpected resistance, internally and abroad.

As soon as the votes were counted, on August 23 the credit rating agency Moody's issued a comment stating that stopping oil exploitation in Yasuni and mining activities in Choco, a referendum option that got 59% of the votes, would be a negative factor in credit terms for Ecuador.

Moody's note for the country is Caaa3, indicating high risk, and lowering it a notch would result in a default qualification and further increase the interest rate paid by the country to its creditors.

There are 225 wells in operation in the area that the referendum protects, producing some 55,000 barrels of oil per day.

According to the popular decision, Petroecuador has one year to close the wells and dismantle a power plant, shipping areas, twelve oil platforms, roads and pipelines.

Addressing indigenous leaders in a leaked private conversation, outgoing president Guilermo Lasso, announced on September 6 that he will not abide by the referendum decision because it is "inapplicable" and "it is not possible to close an oil well overnight".

Pedro Bormeo, spokesperson of the YASunidos coalition that promoted the referendum, commented that "these statements clearly demonstrate the anti-democratic intentions of the Lasso government to violate the will of the people and further aggravate the institutional crisis".

General elections were anticipated in Ecuador because of that crisis and Lasso's term ends next November 25, to be succeeded by the winner of the second round of elections, scheduled for October 15.

Moody's threat of lowering the risk rating of Ecuador because of the estimated economic impact of the referendum was criticized in a joint statement initiated by local and international NGOs, such as the Ecuadorean Centre for Economic and Social Rights, the Latin American Network for Economic and Social Justice, EURODAD and the Asian Peoples' Movement on Debt and Development.

The statement stressed that, "The disproportionate power of private agencies to rate country risk means that government regulatory authority and democratic decision-making is transferred to the private sector. This can create significant problems... (and) make development finance more expensive at a time when it is needed to address the climate crisis and the international economic crisis".

The statement also promotes a "debate on the role of risk rating agencies and to what extent their evaluations respond to adequate and objective criteria, given that they can affect sovereign decisions, in ways that limit countries' energy transition and environmental preservation decisions."

It calls on the Ecuadorean government to "defend the sovereign decision of its people" and demands from the international community "to explore alternatives, such as an international mechanism to restructure sovereign debt vis-a-vis private creditors" and "the creation of a multilateral credit rating agency that can counter the current monopoly".

The three main credit rating agencies (Moody's, Standard & Poor's and Fitch Ratings) control approximately 95% of credit ratings in the financial markets.

The statement argues that "a reform in the way credit risk is assessed could prevent countries that seek to preserve the environment, and contribute to global decarbonisation, from being penalised".

The signatories "demand international cooperation to finance decarbonization" and condemn the "new form of colonialism" resulting from "the pressure of richer countries and private lenders to repay debts", which forces them to continue investing in extractive projects, particularly of fossil fuels.

The context in which the government elected in October is mandated to implement the referendum result is a complex one.

The candidate of the National Democratic Action (ADN) alliance, businessman Daniel Noboa Azin agrees with not exploiting the Yasuni oil because he does not see a real loss in income, considering oil price projections.

He argues that "the average (price per barrel) will not be more than $70, if you subtract the $8 (of the differential) for being heavy crude, the Ecuadorian is $62 and the cost of Yasuni is $58. If it were to make any money it would be very little and even so there is a real possibility, however minimal, of contamination".

However, the current government quantifies the annual loss of income that would result from not exploiting the area at $1.2 billion and the candidate of the Citizen Revolution, Luisa Gonzalez, said that the $1.2 billion is very important for the economy.

Additionally, the unilateral termination of international contracts exposes Ecuador to investors' demands at arbitration panels for compensation estimated at some $10 to $15 billion.

"We don't even have enough to pay for health, education, the El Nino phenomenon, what are we going to do now if we have to pay billions in compensation?" she asked in a radio interview after the referendum results were known.

Gonzalez is the candidate supported by former president Rafael Correa, who proposed a decade ago an ambitious program to leave the Yasuni oil in the ground if the international community would contribute half of the losses that the country would suffer as a result of this contribution to the global fight against climate change.

Since that support never materialized, Correa decided to start the oil extraction in the area to fund health, education and social protection.

This decision, in turn, made him lose support among indigenous people and environmentalists, dividing the progressive coalition and making space for a neoliberal like the now ousted Lasso.

Meanwhile, Colombian president Gustavo Petro, whose election in 2022 highlighted the new wave of progressive governments in Latin America, has been critical of his predecessors' emphasis on exporting raw materials to pay for social policies, calling those policies "extractivism".

Instead, he argues, Colombia and the region must move "to a productive economy that generates much more work" and "can have increasing and not decreasing returns, like oil and coal, and that it should be linked to the land, necessarily, to water, agriculture and the knowledge industry".

Yet, when the people of Ecuador vote decisively in a referendum to follow such a path, consistent with its climate responsibility and the achievement of the Sustainable Development Goals, they are threatened with investor-to-State dispute claims that may have international private arbitrators imposing billions in "compensation" including potential future profits and, additionally losing their credit rating and having to pay higher interests on their debt. (SUNS 9852)

[Roberto Bissio is the Executive Director of the Third World Institute based in Uruguay.]*

Monopolies on Biologics, including Vaccines:

The Case for Reform in Intellectual Property and Pharmaceutical Regulation

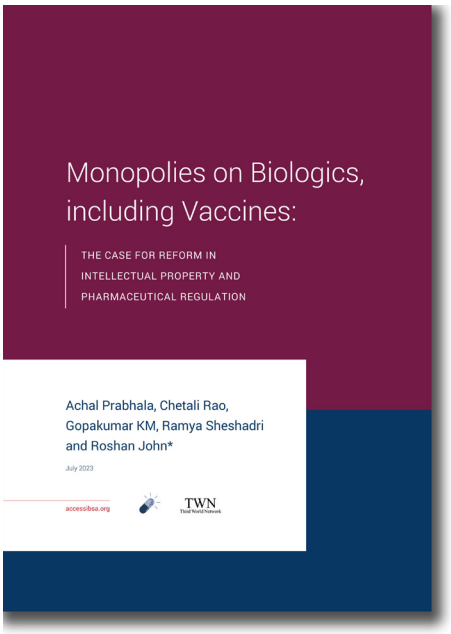
Achal Prabhala, Chetali Rao, Gopakumar KM, Ramya Sheshadri and Roshan John

Published by AccessIBSA and Third World Network

Biologics are large complex molecules originating from bacteria, yeast, insects, plants, and engineered mammalian cells, and are a category that includes both biotherapeutics and vaccines. This report examines monopolies on biologics in India, and makes the case for reform of Indian laws and policies governing the management of intellectual property and pharmaceutical regulation. It does so through a deep dive into India's experience with biologics over the last decade.

The first chapter of the report examines intellectual property monopolies, primarily through patents, on biologics. The second chapter examines monopolies created by pharmaceutical regulation, primarily through trade secrets.

Publication of the report in the wake of the Covid pandemic coincides with a universal awareness of the importance of affordable and accessible biologics, because we are now fully aware of the importance of both non-vaccine biologics (such as monoclonal antibodies) for the treatment of Covid, as well as vaccines for the prevention and mitigation of Covid.



Available at https://twn.my/title2/books/pdf/Monopolies%20on%20Biologics,%20including%20Vaccines.pdf

Third World ECONOMICS No. 778, 1-15 September 2023

Finally, a real chance for international tax cooperation

African governments have successfully pushed for the United Nations to lead on international tax cooperation, and all developing countries and fair-minded governments must now rally behind this initiative, argues *Jomo Kwame Sundaram**.

KUALA LUMPUR: After decades of resistance by rich nations, African governments successfully pushed for the United Nations to lead on international tax cooperation.

All developing countries and fair-minded governments must rally behind this initiative.

UN leadership

The official UN Secretary-General's Report (SGR) was mandated by a UN General Assembly resolution, unusually adopted by consensus in late 2022.

All countries must now work to ensure progress on financing to achieve the Sustainable Development Goals (SDGs) and climate justice after major setbacks due to the pandemic, war and illegal sanctions.

Rich countries had blocked an earlier tax cooperation initiative at the Addis Ababa Financing for Development (FfD) summit in mid-2015.

With grossly inadequate funding, the SDGs were condemned to a still birth.

The SGR on options to strengthen international tax cooperation is, arguably, the most important recent proposal - remarkably, from a beleaguered and much ignored UN - to enhance FfD for SDG progress.

It proposes three options: a multilateral tax convention, an international tax cooperation framework convention, and an international tax cooperation framework.

The first two would be legally binding, while the third would be voluntary in nature.

Eurodad proposal

In response, the European Network on Debt and Development (Eurodad) has made a proposal - supported by the Global Alliance for Tax Justice (GATJ) – noting: "It is time for governments to deliver ... [and] ... cooperate internationally to put an end to tax havens and ensure that tax systems become fair and effective.

"International tax dodging is costing public budgets hundreds of billions of Euros in lost tax income every year, and we need an urgent, ambitious and truly international response to stop this devastating problem.

"We believe the right instrument for the job is a UN Framework Convention on International Tax Cooperation and we call on all governments to support this option...

"For the last half century, the OECD has been leading the international decision-making on international tax rules and the result is an international tax system that is deeply ineffective, complex and full of loopholes, as well as biased in the interest of richer countries and tax havens.

"Furthermore, the OECD process has never been international. Developing countries have not been able to participate on an equal footing, and the negotiations have been deeply opaque and closed to the public.

"We need international tax negotiations to be transparent, fair and led by a body where all countries participate as equals. The UN is the only place that can deliver that."

A big step forward?

Strengthening international tax cooperation is expected to be the major issue at the one-day UN High-level FfD Dialogue on 20 September 2023.

A UN resolution on international tax cooperation – for General Assembly debate after September 2023 - should plan a UN-led intergovernmental process.

After all, developing such solutions is a key purpose of the multilateral UN.

The Africa Group at the UN had appealed for a Convention on Tax in 2019, to help curb illicit financial outflows.

After all, such tax-related flows are international problems, requiring multilateral solutions.

International tax cooperation should be inclusive, effective and fair. The EURODAD-GATJ proposals deserve consideration by all Member States negotiating a UN tax convention.

The outcome should include:

* Create an inclusive international tax body. The Convention should create international tax governance arrangements, using a Conference of Parties (CoP) approach, with all countries participating as equals. Currently, international tax rules are decided in various bodies where developing countries never participate as equals.
* Enable an incremental approach to achieve other intergovernmental agreements. The outcome should be a framework convention, with basic structures, commitments and agreements enabling further updating and improvements later.
* Incorporate developing countries' interests, concerns and needs to achieve tax justice. The Convention should address developing countries' interests, concerns and needs, replacing current tax standards and rules favouring wealthier nations.
* Enhance international coherence. The Convention should develop a coherent system for all nations, including developing countries. It should eventually replace the plethora of existing bilateral and plurilateral tax treaties and agreements with a coherent overall framework. This should improve effectiveness and cut tax dodging.
* Strengthen international efforts against illicit financial flows, especially involving tax avoidance and evasion, with simpler, more coherent and straightforward rules and standards to improve transparency and cooperation among governments.
* Eliminate transfer pricing. The Convention should eliminate transfer pricing by replacing existing rules enabling such abusive practices.
* Tax transnational corporations globally. Transnational corporations' consolidated profits should be taxed on a global basis. Tax revenue should

be distributed among governments with a minimum effective corporate income tax rate based on a fair and principled agreed formula recognizing developing countries' contributions as producers.

* End coerced acceptance of biased dispute resolution processes. The Convention should not require countries to accept biased processes, such as binding arbitration, favouring those who can afford costly legal resources.

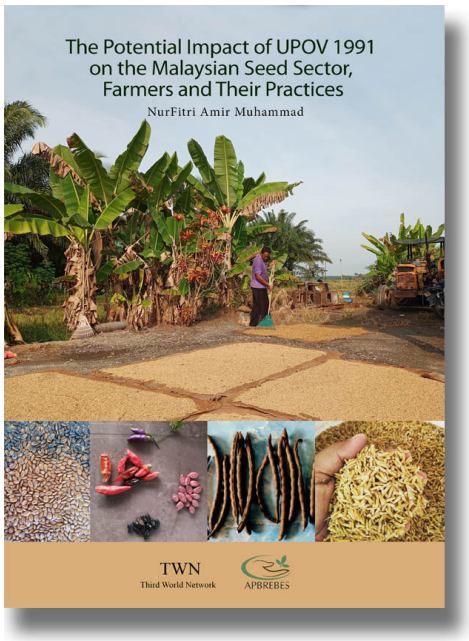
Effective dispute prevention would reduce the need for dispute resolution. Alternative mechanisms for resolving disputes could also be negotiated – using inclusive and transparent decision-making processes – under the Convention.

* Enhance sustainable development and justice. The Convention should promote progressive taxation at national and international levels. It should ensure improved international tax governance and support government commitments and duties, especially relating to the UN Charter and Sustainable Development Goals.
* Improve government accountability. The Convention should ensure transparent and participatory tax decision-making, with governments held accountable to national publics.
* Ensure transparency. The Eurodad proposal emphasizes the "ABC of tax transparency", i.e., Automatic Information Exchange, Beneficial Ownership Transparency, and Country-by-Country reporting.

Actual progress will not come easily, especially after the strong-arm tactics – used by the G-7 group of the biggest rich economies and the Organization for Economic Cooperation and Development (OECD) - to impose its tax proposals at the expense of developing countries. *(IPS)*

[Jomo Kwame Sundaram, a former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.]*

The Potential Impact of UPOV 1991 on the Malaysian Seed Sector, Farmers and Their Practices



NurFitri Amir Muhammad

Malaysia has a unique and functional system in place for protecting intellectual property on plant varieties. Its Protection of New Plant Varieties Act 2004 provides for the granting of rights to plant breeders while also recognizing farmers' innovations and safeguarding exceptions for their rights to save, use, exchange and sell seeds.

This delicate balance could however be upended if Malaysia signs on to the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991). Designed to further the interests of commercial breeders in developed countries, the UPOV 1991 regime will severely restrict the age-old farming practice of seed saving and promote corporate seed monopolies in its stead, thereby undermining farming livelihoods, food security and agricultural biodiversity.

Drawing on rigorous research and interactions on the ground with domestic food farmers, this report sounds a clarion call to resist pressures for Malaysia to join UPOV 1991, and makes the case for a plant variety protection framework that is more attuned to the needs of the country's agricultural system.

Available at https://twn.my/title2/books/pdf/Potential%20Impact%20UPOV%20Malaysia.pdf