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**WTO: South punished instead of disciplining big subsidizers at fisheries talks
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Geneva, 22 Jan (D. Ravi Kanth) — The chair of the Doha fisheries subsidies negotiations last week held discussions at the World Trade Organization on several aspects in his draft consolidated text concerning the proposed disciplines on subsidies contributing to overcapacity and overfishing (OCOF) that continue to deplete global fish stocks, where he has seemingly not disclosed the top 20 subsidizers for whom he has allegedly provided carve-outs on the condition that they comply with stringent notification requirements, said people familiar with the discussions.

The chair's draft text is aimed at securing an outcome on disciplines on subsidies contributing to OCOF at the WTO's 13th ministerial conference (MC13), to be held in Abu Dhabi from 26 February.

It appears to include a higher threshold for developing and least developed countries to avail of special and differential treatment (S&DT) even though they did not create the problem of the global depletion of fish stocks, said people, who asked not to be quoted.

During the first week of the "Fish Month" of negotiations that ended on 19 January, the chair seems to have focused on several aspects of the "subsidies contributing to overcapacity and overfishing" under Article A.1.1 (a) that allegedly provides soft treatment for the "20 largest providers of fisheries subsidies by annual aggregate value as notified to the WTO."

These 20 largest subsidizers are exempted from the list of prohibited subsidies that contribute to overcapacity and overfishing provided they demonstrate that "measures are implemented that can reasonably be expected to ensure that the stock or stocks in the relevant fishery or fisheries are at a biologically sustainable level."

The draft text proposed stringent notification requirements that would require the 20 largest subsidizers to make such demonstration "through a notification as soon as practicable and no later than three months after a new subsidy program comes into effect, and thereafter in the Member's regular notifications of fisheries subsidies under Article 25 of the SCM Agreement, Article 8 of the Agreement on Fisheries [Subsidies], and Article C."

Given the poor historical record of Members in complying with notification requirements at the WTO, it is not clear whether the future compliance concerning OCOF subsidies would be anything better, said several people who asked not to be identified.

The current formulation in the chair's draft text seems to apply a more stringent test for Tier 2 Members because it refers to whether the measures are effective or not in achieving their objective, said analysts, who asked not to be quoted.

For legitimate sustainability, a more stringent test is required for Tier 1 Members and to ensure that there is an obligation of a result.

One interpretation of the test for the top 20 subsidizers is whether there is a reason to believe that the measures will attain the prescribed objective, i.e., it will not be necessary to prove that this is effectively happening but that it could happen.

Developing countries appear to be on the backfoot because the compliance with the envisaged OCOF "green" subsidies notification requirement is contingent on the submission of an Article 25 industrial subsidies notification in the Agreement on Subsidies and Countervailing Measures (ASCM), an inter-linkage that was already established in the interim Agreement on Fisheries Subsidies adopted at MC12.

Since December 2022, more than eighty WTO Members, all of which are classified as either developing or least developed countries, have not yet submitted their new and full Article 25.1 ASCM notifications, which were due on 30 June 2021.

There are major constraints with the compliance of existing notification obligations that have not been adequately addressed in the fisheries subsidies negotiations.

Article A.1.3 in the chair's draft text could be detrimental to the developing and least developed countries which subjects Members who do not notify or who submit an inconsistent notification, to the subsidies prohibition, said a person, who asked not to be quoted.

Besides, neither the chair nor the WTO Secretariat has provided the list of the 20 largest subsidizers, said people who asked not to be quoted.

TWO EMAILS FROM THE CHAIR

Two emails sent by the chair to heads of delegation on 17 and 18 January seem instructive on several aspects of the OCOF subsidies.

In the first email sent to members on 17 January, the chair said that he intends "to organize tomorrow's focused thematic session to discuss transparency provisions in Article A.1.1 c) and Article C.

In particular, it would be useful to focus our discussion on:

* Demonstration in Article A.1.1 through notifications under sub-paragraph c). In particular, I would be interested in hearing Members' views on whether the items listed to be notified are sufficient or if there are additional relevant items to be added; and

* Any new views or ideas on any of the provisions in Article C."

The chair continued: "Furthermore, in various interventions this week (starting from 15 January), the issue of specificity has been raised in relation to the disciplines as well as various notification obligations. In this regard, I think it would be useful to start our session with a short presentation by the WTO Secretariat on specificity in the context of the Agreement on Subsidies and Countervailing Measures."

On Article A.1.1. c) in the draft text, the chair proposed that the notifications referred to in Article A.1.1 (a) and A.1.1 (b) shall be sufficiently precise to enable other Members to evaluate the consistency of the subsidy with the conditions set out in Article A.1.1 and shall include the following:

(i) 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 are managed by an RFMO/A;

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

(iii) to the extent possible, information on the fleet capacity in the fishery for which the subsidy is provided.

Article C mentioned by the chair in the draft text contains provisions on "notification and transparency."

They include:

"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 this Article.

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 (a provision proposed by the US which is seemingly inconsistent with the subsidy disciplines); 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 to fishing and fishing related activities that are not specific within the meaning of Article 2 of the SCM Agreement.

C.4 Not later than 90 days from the entry into force of these disciplines, each Member shall notify to the Committee on Fisheries Subsidies all information that is necessary for the determination of its annual aggregate level of fisheries subsidies. Thereafter, each Member shall submit this information to the Committee on Fisheries Subsidies in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement, Article 8 of the Agreement on Fisheries [Subsidies], and this Article. Each Member shall submit this information through a template the content and form of which shall be previously agreed by Members.”

While these provisions appear to be a rather weak assurance that stringent notification and transparency disciplines are being proposed for the 20 largest subsidizers through a path of sustainability, it is not a guarantee that these subsidizers will adhere to these disciplines going by the previous track record of compliance, said people, who asked not to be quoted.

It is also not clear why the chair did not adopt a hard approach based on the “historical wrongs” by prohibiting the big subsidizers from subsidizing distant-water fishing, said a former capital-based negotiator, who asked not to be quoted.

As distant-water fishing is primarily undertaken through fuel and vessel subsidies, two issues that are apparently dealt with a soft touch in the chair's draft text, the “two-tier sustainability approach” is a “mirage,” the negotiator said.

In the second email sent to members on 18 January, the chair said: “On Friday afternoon, we will focus on Article A.2 (which 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 (whether solely or as one of several other conditions)” and related issues.

“Many of you have been addressing geographical delimitations in relation to different aspects of the draft text whether fishing and fishing related activities within and outside of EEZs should be treated differently. Article A.2 deals with one aspect of that question. On Friday, I propose that we dedicate our thematic session to discuss Article A.2 regarding subsidies contingent upon, or tied to, actual or anticipated fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction including the placeholder in Article A.2 b [PLACEHOLDER: POSSIBLE FLEXIBILITY FOR SUBPARAGRAPH (a)].”

Clearly, there appears to be growing dissatisfaction over the manner in which the largest subsidizers like the EU, the US, Japan, Korea, China, and Chinese Taipei among others are being allowed to continue with their fuel and vessel subsidies under the pretext of adhering to the two-tier sustainability notification requirements, said several people, who asked not to be quoted.

Although the discussions are yet to focus on all the elements of special and differential treatment (S&DT) for developing countries, a cursory glance at the draft text suggests that the conditions attached to availing of S&DT are much more stringent as compared to the carve-outs given to the largest subsidizers, said negotiators, who asked not to be quoted. +

