

THE USE OF FORCED LABOR ON FISHING VESSELS

Submission of the United States

The use of forced labor on fishing vessels has been widely documented in recent years, particularly with respect to distant-water fishing vessels, which tend to be subsidized. This is a problem Members have recognized in other international fora, but the Negotiating Group on Rules (RNG) has yet to address it explicitly. This proposal outlines an approach that works within the framework of the current draft consolidated Chair text (TN/RL/W/276) to ensure an agreement on effective disciplines on harmful fisheries subsidies can contribute to Members' efforts to highlight and address the use of forced labor on fishing vessels. This approach consists of (1) the inclusion of effective disciplines on harmful subsidies to fishing activities that may be associated with the use of forced labor; (2) the explicit recognition of the problem and the need to eliminate it; and (3) transparency with respect to vessels or operators engaged in the use of forced labor.

1. Effective Disciplines on Subsidies to Fishing Activities Associated with the Use of Forced Labor

Members are currently negotiating disciplines on harmful fisheries subsidies, including with respect to illegal, unreported, and unregulated (IUU) fishing, certain distant water fishing, and fishing by vessels not flying the subsidizing Member's flag. The use of forced labor has often been associated with these types of fishing. Disciplines to prohibit these harmful subsidies can therefore contribute to Members' efforts to address the use of forced labor on fishing vessels, provided they are effective and not subject to unnecessary carveouts or exemptions. These disciplines should therefore be included in any outcome.

Article 3 of the draft consolidated Chair text contains a prohibition on subsidies to a vessel or operator engaged in IUU fishing. To be most effective, the scope of the prohibition should extend to fishing related activity in support of IUU fishing. Certain fishing activities that may support IUU fishing, such as transshipping, may also be associated with the use of forced labor. For example, support that enables a vessel to offload fish and receive fuel and supplies at sea, without returning to port for long periods of time, may also allow vessels using forced labor to evade detection. Therefore, for greater certainty, the following text is proposed for inclusion in Article 3.1:

3.1 No Member shall grant or maintain any subsidy to a vessel ~~for~~ operator⁴ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of such fishing.

We note that, should this text be included in Article 3.1, corresponding adjustments to related provisions in Article 3 will be necessary.

Article 5.2(a) of the draft consolidated Chair text prohibits fisheries subsidies that are contingent upon fishing or fishing related activities at sea in areas beyond a subsidizing Member's jurisdiction.¹ These types of subsidies pose unique problems for the sustainability of fish stocks. Members have recognized, for example, that some flag States may have difficulty monitoring vessels' activities far from home, and some coastal States may lack capacity to monitor and enforce rules on foreign vessels fishing in their waters, especially when such vessels are numerous or not well-regulated by their flag State. The inability of Members to effectively monitor distant water fishing vessels may also facilitate the use of forced labor. Given that the use of forced labor has been widely documented with respect to vessels engaged in distant water fishing, the inclusion of this discipline in any outcome will contribute to Members' efforts to address this problem.

Article 5.4 of the draft consolidated Chair text prohibits subsidies to vessels not flying the flag of the subsidizing Member. This discipline is based on the proposal in TN/RL/GEN/201/Rev.1, which outlines the rationale for this prohibition. The practices described in TN/RL/GEN/201/Rev.1 may also enable fishing vessels engaged in the use of forced labor to avoid detection, and therefore an effective discipline on subsidies to vessels not flying the flag of the subsidizing Member can contribute to Members' efforts to address this problem.

2. Recognition of Forced Labor on Fishing Vessels and the Need to Eliminate It

The international community has recognized the problem of the use of forced labor on fishing vessels, and it is time for Members acting within the WTO to do the same. There is value in raising awareness of this issue and in signaling our collective resolve to address it.

The following text is proposed for inclusion in any preamble to the agreement:

Recognizing that effective disciplines on and greater transparency of fisheries subsidies can contribute to Members' efforts to prevent and halt the use of forced labor on fishing vessels;

The following text is proposed for inclusion as a chapeau to Article 3 concerning IUU fishing:

Members recognize that the use of forced labor on fishing vessels is often associated with IUU fishing, and therefore that effective disciplines on subsidies to vessels and operators engaged in IUU fishing or fishing related activities in support of such fishing can contribute to Members' efforts to eradicate forced labor on fishing vessels.

¹ Article 5.2(a) and footnote 11 of the draft consolidated Chair text (TN/RL/W/276) are based on the proposal contained in RD/TN/RL/91/Rev.1.

3. Transparency with Respect to Vessels or Operators Engaged in the Use of Forced Labor

The draft consolidated Chair text provides in Article 8.2(a) for the notification of any list of vessels and operators a Member has determined as having been engaged in IUU fishing. This notification allows each Member to ensure that it does not provide fisheries subsidies to any such vessels or operators. The notification of vessels or operators engaged in fishing or fishing-related activities for which a Member has information that reasonably indicates the use of forced labor may similarly provide Members with critical information concerning the recipients of its fisheries subsidies. This information will help other Members evaluate the effects of the disciplines on harmful fisheries subsidies and how they can make a meaningful contribution to addressing this problem.

The following text is therefore proposed for inclusion as Article 8.2(b):

8.2. Each Member shall notify the [Committee] in writing on an annual basis of:

(a) any list of vessels and operators that it has determined as having been engaged in IUU fishing; ~~and~~

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

~~(b)~~(c) a list of any fisheries access agreements in force with another government or governmental authority, and such notification shall consist of the titles of the agreements and a list of their parties.

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