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May 31, 2023,

The Joint Standing Committee on Treaties  
Parliament House  
Canberra

**Re the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization  
Agreement on Fisheries Subsidies**

The Australian Fair Trade and Investment Network advocates for fair trade consistent with human rights, labour rights and environmental standards. This letter supports the following points in the submission from the Pacific Network on Globalisation (PANG), which is a network of community organisations in the Pacific Islands.

**1. The agreement is limited in scope and does not cover the full range of measures that contribute to overcapacity and overfishing**

WTO negotiation on fisheries subsidies have been ongoing in various forms for 20 years. As acknowledged in the DFAT National Interest Analysis (NIA), the most recent aim of these negotiations was to stop overfishing of all global fish stocks for both environmental and commercial reasons, based on the 2015 UN Sustainable Development Goal 14.6 which states that governments should:

“By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the (WTO) fisheries subsidies negotiation.”<sup>1</sup>

The International Institute for Sustainable Development notes that, while the agreement addresses illegal, unreported and unregulated (IUU) fishing it does not address subsidies which contribute to overcapacity and overfishing.

“Members could not, however, find consensus on a broader, and somewhat more direct, rule that would have prohibited subsidies that contribute to overcapacity and overfishing. This rule was an integral part of the package of disciplines negotiated in the lead-up to MC12. It would have established a general prohibition on subsidies ‘that contribute to overcapacity and overfishing,’ specifying that such subsidies include an illustrative list of

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<sup>1</sup> DFAT (2023) National interest Analysis, p.3,  
[https://www.apf.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/WTOFisheriesSubsidies/Treaty\\_being\\_considered](https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Treaties/WTOFisheriesSubsidies/Treaty_being_considered).

particular subsidy types—which are generally considered the most likely to incentivize overfishing and overcapacity.”<sup>2</sup>

One of the main environmental and commercial threats comes from large trawling vessels conducting overfishing of fish stocks, including in international waters. Globally, only 6.6 percent of fishing vessels are large scale trawlers, but they account for half of gross tonnage of fish catch.<sup>3</sup> As the PANG submission states, “The agreement fails to address those most responsible for the current state of global fish stocks.”

Article 12 commits to expand the agreement to cover those issues through further negotiations over the next four years, and the agreement will lapse if this is not achieved.<sup>4</sup> The objective of Article 12 is to ensure that negotiations on further disciplines, particularly in respect of subsidies contributing to overcapacity and overfishing, are completed within a reasonable time frame after the Agreement enters into force.

## **2. Overfishing impacts most on small developing and least developed countries including the Pacific Islands which rely on small scale fishing and have the least technical and resource capacity for implementation of the agreement**

The agreement places the onus on Coastal Member to make a determination of IUU fishing according to defined criteria and supply all required information to the state from where the vessel originates. This can be a complicated process, given many ships receiving subsidies operate under flags of convenience, where the registration location may be different from the subsidising government. The identified state should then take action to end the subsidy to that vessel. This requires that developing country states have both capacity and resources to make the determination and supply the information. However, there is no provision for providing such capacity and resources through allocating resources through a mandatory Special and Differential Treatment (STD) allocation.

The DFAT NIA confirms that Article 7 of the Agreement provides for technical and capacity building assistance for developing country Members, including Least Developed Country (LDC) Members, for the purpose of implementation. However, the NIA notes that the agreement refers to the establishment of a voluntary WTO funding mechanism and confirms that “contributions of WTO Members to such mechanism shall be exclusively made on a voluntary basis and not utilise regular budget resources.”<sup>5</sup>

As the PANG submission says:

“This raises a number of concerns about the capacity of developing and least developed country Members to be able to meet the requirement to make such determinations. The

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<sup>2</sup> International Institute for Sustainable Development (2023) The WTO agreement on fisheries subsidies: a reader's guide, March, p. 25. <https://www.iisd.org/publications/guide/wto-agreement-fisheries-subsidies-readers-guide#:~:text=The%20WTO%20Agreement%20on%20Fisheries%20Subsidies%20is%20the%20first%20WTO,th,e%20sustainability%20of%20marine%20resources.>

<sup>3</sup> Peter Lunenborg and Elenoa Dimaira, (2022) Caught in a net: Making the WTO fisheries subsidies agreement work for development and sustainability? November, <https://pasifika.news/2022/11/caught-in-a-net-making-the-wto-fisheries-subsidies-agreement-work-for-development-and-sustainability/>.

<sup>4</sup> WTO (2022) Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization Agreement on Fisheries Subsidies, Article 12.

<sup>5</sup> DFAT NIA, p.5.

failure to include an explicit SDT allocation to support capacity in this area undermines the ability to prohibit IUU subsidies”.

### **3. Legal ambiguities should be addressed**

The final text was negotiated hurriedly under pressure at the 12<sup>th</sup> Ministerial Meeting in June 2022. There are some legal ambiguities in the text which are usually removed by a legal review or scrubbing process but this has not taken place. This means the legal ambiguities remain and need to be clarified in the negotiations for a comprehensive agreement.

### **4. Recommendations**

We urge the committee members to note these concerns in the PANG submission and to recommend:

- That the Australian government support speedy resumption of the negotiations for a more comprehensive agreement which will include a more direct rule that would prohibit subsidies that contribute to overcapacity and overfishing, and regulate the activities of large trawling vessels conducting subsidised overfishing of fish stocks, including in international waters.
- That the government support mandatory assistance to developing and least developed countries for technical and capacity building to implement the current and more comprehensive agreement.
- That the more comprehensive agreement include other appropriate special and differential treatment provisions for developing countries, including effective longer implementation times.
- That in those negotiations the government support clarification of the legal ambiguities identified in the PANG submission.

Dr Patricia Ranald, AFTINET Convener.