

APEC Best Practices in Addressing Subsidies that Contribute to IUU Fishing

Summary Report of the APEC Committee on Trade and Investment (CTI) Online Workshop held on 22 February 2021

Executive summary

- Mechanisms to prevent the granting of subsidies to IUU fishing, or to withdraw subsidies in cases of IUU, constitute powerful instruments to encourage compliance under an integrated approach to IUU enforcement.
- Several APEC economies have already established mechanisms to prevent or withdraw subsidies to IUU fishing, using a variety of approaches as illustrated by the case of Chile, China and Thailand.
- Such mechanisms define the type of infringements triggering a subsidy removal; the actors targeted by such prohibitions (e.g., vessels or operators); the subsidy penalty imposed; the type of fishing targeted; the duration of a subsidy prohibition; specific commitments of beneficiaries to qualify as subsidy recipient; or transparency requirements.
- These emerging practices constitute critical elements of good practices in the region and a timely contribution to unresolved issues in ongoing multilateral deliberations, including WTO negotiations on subsidies to IUU fishing.
- Discussions highlighted the importance of clear and transparent rules regarding IUU determinations and the sanctions applied including the withdrawal of subsidies. It also stressed the need for effective coordination between the relevant ministries making the IUU determination and those activating the withdrawal of subsidies.

Background

The New Zealand self-funded online workshop on “APEC Best Practices addressing Subsidies that Contribute to IUU Fishing” was held on 22 February under the auspices of the APEC Committee on Trade and Investment (CTI). Its objective was to share information and best practices on approaches individual APEC economies have undertaken to ensure that fisheries subsidies do not contribute to Illegal, unreported, and unregulated (IUU) fishing. The workshop built on the findings of the *Stock Take of APEC Economies’ Existing Measures on Withdrawal of Subsidies in Cases Where There Has Been a Determination of IUU Fishing* (APEC#220-CT-01.8) undertaken through CTI in 2020. It further elaborated on the report’s findings through the presentation of case studies on policy initiatives adopted by APEC economies, and discussions of the applicability and relevance of regional and



international best practices in the APEC region (for further details, see annotated agenda in Annex 1). Participants included policymakers and practitioners across the APEC region including officials attending the CTI and the APEC Ocean Fisheries Working Group (OFWG).

Introduction

The two-hour online workshop was opened by Mr. Greg Andrews, Unit Manager, Trade Negotiations Division, Ministry of Foreign Affairs and Trade, New Zealand. Mr. Andrews stressed the importance for New Zealand, as host of APEC in 2021, to promote economic policies that address the region's most serious environmental challenges. IUU fishing remains one of the greatest threats to marine ecosystems resulting in losses of up to USD 23 billion a year. Government support to fishing is a critical tool to combat IUU fishing, as there are documented cases of subsidies directly associated with IUU fishing activities. In this respect, Mr. Andrews recalled the international commitments to eliminate subsidies that contribute to IUU fishing UN and WTO Members had made under Sustainable Development Goal (SDG) 14.6 and the December 2017 Ministerial Decision on fisheries subsidies of the World Trade Organization (WTO). He highlighted the strong support for such disciplines at the multilateral level but also the challenges in operationalizing them and the importance of concluding WTO negotiations on fisheries subsidies as soon as possible in 2021. As a contribution to this process, the sharing of experiences and best practices among APEC economies in addressing subsidies that contribute to IUU fishing could provide significant insights on approaches to implementation of existing commitments and a WTO outcome.

Session 1: Existing practices against IUU fishing

Session one started with a presentation by Ms. Claire Delpuch, Fisheries Policy Analyst at the Organisation for Economic Co-operation and Development (OECD) who introduced the findings of an OECD survey on IUU policies and practices covering 33 economies including thirteen APEC economies. The survey measured progress in implementing internationally recognised best policies and practices against IUU fishing, using a range of indicators in six areas including vessel registrations, authorisation to operate inside or outside Exclusive Economic Zones (EEZs), port state measures, market measures including subsidies, and international cooperation.

The analysis showed where APEC members stood compared to other economies and identified a set of recommendations such as using market measures to close fisheries value chains and port services to IUU fishing operators; strengthening registration, for example by gathering information on who ultimately controls and benefits from vessel activities; issuing a unique vessel identifier in the registration process; increasing transparency to facilitate co-operation in eliminating IUU fishing; and improving the regulation of transshipment and other fisheries-related activities. The survey also highlighted recommendations for Regional Fisheries Management Organizations (RFMO), noting



their reduced capacity to monitor IUU activities due to the COVID-19 pandemic. These included the need to increase the uptake of remote monitoring technologies, to agree on procedures for the use and sharing of data (including mutual recognition of IUU vessel lists) and to improve co-ordination in data collection processes and standards.

Narrowing down the discussion to the role of subsidies, Mr. Christophe Bellmann, Senior Policy Advisor at the International Institute for Sustainable Development (IISD), provided an overview of the main findings of the APEC stock take exercise analysing the various approaches taken by fourteen different APEC economies and three regional integration schemes to prevent subsidies to IUU fishing or withdraw them in cases where there has been a determination of IUU. Based on information provided by those economies, the stock take identified different approaches to define the type of infringements triggering a subsidy removal; the actors targeted by such prohibitions (e.g., vessels or operators); the subsidy penalty imposed; the type of fishing targeted; the duration of a subsidy prohibition; specific commitments of beneficiaries to qualify as subsidy recipient; or transparency requirements.

Session 2: Case studies of best practices in APEC economies

Building on the first two presentations, this session focused on a series of cases studies of existing mechanisms in Chile, Thailand, and China to prevent subsidies to IUU fishing or withdraw them in case of an IUU determination. Mr. Pablo Ortiz Lima, Head of Fisheries Control Department at the National Fisheries and Aquaculture Service in Chile (SERNAPESCA) described the type of IUU infractions that can lead to the withdrawal of a fishing authorization under Chile's general law on fisheries and aquaculture, some of which are now considered to be criminal infractions. He also highlighted new tools SERNAPESCA uses in combating IUU fishing along the value chain from capture and landing, through transport and processing, to commercialization and exports. Finally, he highlighted the creation of the National Institute for the Sustainable Development of Artisanal Fishing and Small-Scale Aquaculture (INDESPA) which promotes the development of small-scale aquaculture and artisanal fisheries including through the provision of subsidies. Article 13 of the law establishing INDESPA sets out that no subsidies will be given to vessels and/or operators who have been sanctioned by a final judicial or administrative decision for violating the General Law on Fisheries and Aquaculture; a sanction which lasts for up to two years. As a party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Chile will be also bound after ratification by Article 20.16(5) which prohibits subsidies provided to any fishing vessel while listed by the flag State or a relevant RFMO/A for IUU fishing.

Ms. Jariya Jiwapibantanakit, Economist, at the Department of Fisheries of Thailand described Thailand's reforms to combat IUU fishing in the fishery sector undertaken since 2015. These included



specific initiatives to develop new fisheries laws and regulations; an overhaul of Thailand’s fisheries management system; enhanced monitoring, control, and surveillance (MCS) systems; more rigorous law enforcement and sanctions; improved traceability; and proactive international cooperation. The 2015 Royal Ordinance on Fisheries B.E.2558 and its 2017 amendments define fourteen types of fishing operations as severe IUU infringements. Thailand also publishes lists of Thai and foreign vessels engaged in IUU fishing in Thai waters. Fishing vessels included on all RFMOs IUU list are prohibited from entering Thai waters and using Thai port services. In practice, vessels engaged in IUU fishing are not supported by the government financial assistance program, including because their fishing license is suspended. Since 2019 Thailand’s buyback program also provides that all vessels in the program must not be engaged in IUU fishing and bought-back vessels shall be dismantled.

Ms. Zhao Liling, Counsellor II at the Ministry of Agriculture and Rural Affairs of China highlighted the measures undertaken by China to combat IUU fishing, which included the strengthening of fishery management system at the level of international standards; the promotion of high seas fishery resources conservation; a “zero tolerance” approach to IUU activities; international cooperation including on IUU with individual economies and RFMOs; and the promotion of accession to the Port State Measures Agreement (PSMA). With respect to subsidies, Ms. Zhao illustrated the action taken by China through two specific examples. In April 2017, China received reports from Greenpeace regarding two Chinese vessels suspected of IUU fishing. After investigation, the two vessels were convicted, their activities suspended, and the subsidies allocated to them were withdrawn. A second case occurred in May 2018 when China received a report of four vessels suspected of de-activating their vessel monitoring system (VMS). After investigation and verification of the allegations, all activities of the company were suspended and subsidies to the four vessels were removed.

Session 3: Panel discussion on international best practice and relevance to WTO negotiations

This panel discussion looked at how existing regulations and practices in APEC economies related to ongoing discussions in the WTO to prohibit harmful subsidies to fishing and fishing related activities. Based on the findings of the APEC stock take exercise and the experiences shared by APEC economies, the session also identified possible good practices to prevent subsidies to IUU fishing or withdraw them in case of an IUU determination. The panel discussion started with an introduction from Ms. Alice Tipping, Lead, Fisheries Subsidies, at the International Institute for Sustainable Development (IISD) summarizing possible elements of good practices identified in the stock take exercise based on APEC economies’ existing practices (see figure 1).

Dr Penny Ridings, Legal Adviser to the Western and Central Pacific Fisheries Commission, and New Zealand’s candidate for the International Law Commission 2023-2027 discussed how APEC economies’ practices would relate to new obligations under future WTO disciplines on fisheries



subsidies. She provided an update on ongoing WTO negotiations on subsidies to IUU fishing, highlighting areas of consensus but also persisting differences among Members. She described options being considered regarding which entities' IUU determinations would trigger a subsidy prohibition (e.g., coastal state, flag state, RFMO), what agents would be targeted (vessels and/or operators), and what due process elements would be required when a determination is made by a third party (e.g., an RFMO or a coastal state for foreign vessels in waters under its jurisdiction). She also described possible approaches regarding the types of penalty (e.g., making a distinction between minor and serious infringements) or the duration of a possible prohibition (e.g., a fixed or minimum duration), due diligence before granting subsidies and transparency and notification requirements envisaged under future WTO disciplines.

Figure 1: Possible elements of good practice for the withdrawal of subsidies in cases of IUU fishing



Source: Bellmann, Irschlinger and Tipping (2020) "Stock Take of APEC Economies' Existing Measures on Withdrawal of Subsidies in Cases Where There Has Been a Determination of IUU Fishing". APEC Secretariat.

Mr. Bradley Soule, Director of Intelligence at OceanMind, highlighted the importance of subsidy withdrawal when paired with transparency, as a way to help enforcement efforts and strengthen international cooperation. After providing specific examples of different IUU determinations based on OceanMind's practical experience in supporting government in IUU enforcement, Mr Soule



emphasized the importance of recognizing IUU determination by coastal states and the need for transparency for fines and sanctions with different lengths according to a classification of IUU infringements. In his view, it would be critical to target the operators and owners rather than just the vessel, given that subsidies are not directly vessel related. There also needed, he suggested, to be very clear coordination between the relevant ministries making the determination and those activating the withdrawal of subsidies, especially if the subsidies are withheld during investigation – an aspect which can be important to compel an operator to comply with an investigation. Transparency is also key for market actors or seafood buyers who want to know if they are buying from operators that have engaged in IUU. Overall, he underlined, subsidy removal could be a powerful tool to encourage compliance and therefore needed to be thought of as part of an integrated approach to enforcement in the sector.

Open discussion

This session provided an opportunity for participants to engage in an open discussion on APEC economies' good practices in addressing subsidies that contribute to IUU fishing, and possible next steps to build on experience in this area. Interventions from the floor highlighted the importance of transparency not only regarding the publication of IUU lists but also on the sanctions applied including the withdrawal of subsidies, which is not always publicly available in many economies. Some participants similarly stressed the importance of establishing clear and transparent rules with proportionate subsidy penalties according to the type of infractions. The discussion also highlighted that technical assistance to governments is available from different sources to support IUU compliance; collect information; provide relevant technology and analysis; or implement risk assessment programmes. From a WTO agreement implementation perspective, establishing communication channels among relevant ministries involved in IUU determination and those responsible for the withdrawal of subsidies, and defining the duration of subsidy prohibition depending on the type of infringements may require specific support but could arguably be implemented over a period of six months to one year.

Concluding remarks

Mr. Greg Andrews, Unit Manager, Trade Negotiations Division, Ministry of Foreign Affairs and Trade, New Zealand closed the meeting by thanking all the speakers and participants and highlighting key takeaways from the different interventions. He also reminded participants that IUU is an inherently global activity that requires global action. In this respect, the online workshop provided a timely contribution to ongoing deliberations at the multilateral level including WTO negotiations on how to deal with unresolved issues in future disciplines dealing with subsidies to IUU fishing, based on existing practices in APEC economies.



Annex 1

APEC Best Practice in Addressing Subsidies that Contribute to IUU Fishing

APEC Committee on Trade and Investment (CTI) Online Workshop - 22 February 2021

Annotated Agenda

Welcome Remarks (5 min)

- Greg Andrews, Unit Manager, Trade Negotiations Division, Ministry of Foreign Affairs and Trade, New Zealand

Session 1: Existing practices against IUU fishing (20 min)

This session will start with a review of progress achieved in implementing internationally recognised best policies and practices against illegal, unreported, and unregulated (IUU) fishing based on an OECD survey of 31 economies. It will be followed by an overview of the main findings of the APEC stock take exercise analysing the various approaches taken by APEC economies to curb subsidies that contributed to IUU fishing and identifying elements that constituted good practice in policy design.

Moderator: Alice Tipping, Lead, Fisheries Subsidies, International Institute for Sustainable Development (IISD)

- Claire Delpuech, Fisheries Policy Analyst, Trade and Agriculture Directorate, Organisation for Economic Co-operation, and Development (OECD)
- Christophe Bellmann, Senior Policy Advisor, International Institute for Sustainable Development (IISD)

Session 2: Case studies of best practices in APEC economies (30 min)

This session will focus on a series of cases studies of existing mechanisms through which APEC economies prevent subsidies to IUU fishing or withdraw them in cases where there has been a determination of IUU. Discussions will review among other things, due diligence processes before granting fisheries subsidies, the types of IUU infringements triggering a subsidy prohibition, the penalties applied in case of IUU determination or the procedures through which they are implemented.



Moderator: Alice Tipping, Lead, Fisheries Subsidies, International Institute for Sustainable Development (IISD)

- Pablo Ortiz Lima, Head of Fisheries Control Department, National Fisheries and Aquaculture Service, Chile (SERNAPESCA)
- Zhao Liling, Counsellor II, Bureau of Fisheries, Ministry of Agriculture and Rural Affairs, China
- Jariya Jiwapibantanakit, Economist, Fisheries Development Policy and Planning Division, Department of Fisheries, Thailand

Session 3: Panel discussion on international best practice and relevance to WTO negotiations

(20 min.)

This panel discussion will look at how ongoing discussions in the WTO relate to existing regulations and practices in APEC economies. Based on the findings of the APEC stock take exercise and the experiences shared by APEC economies, it will also identify possible best practices regarding the entities whose IUU determination should trigger a subsidy prohibition; elements of due process and positive evidence to be followed when making such determination; the type and duration of sanctions; the entities targeted by the subsidy withdrawal; due diligence processes; or notification and transparency requirements.

Moderator: Alice Tipping, Lead, Fisheries Subsidies, International Institute for Sustainable Development (IISD)

- Dr Penny Ridings, Legal Adviser to the Western and Central Pacific Fisheries Commission, and New Zealand's candidate for the International Law Commission
- Bradley Soule, Director of Intelligence, OceanMind

Open discussion (40 min)

This session will provide an opportunity for all participants to engage in an open discussion on APEC best practices in addressing subsidies that contribute to IUU fishing, and possible next steps to build on APEC economies experience in this area.

Moderator: Alice Tipping, Lead, Fisheries Subsidies, International Institute for Sustainable Development (IISD)

Summary and Closing Remarks (5 min)

- Greg Andrews, Unit Manager, Trade Negotiations Division, Ministry of Foreign Affairs and Trade, New Zealand

