

**INFORMATION PAPER SUBMITTED BY
THE REPUBLIC OF KOREA:**

**“PROPOSED REDRAFT OF ARTICLES 9 AND 17”
AND
“KOREA’S CONCERN REGARDING SUPPLY VESSELS”**

TO THE

**Second resumed session of the
Technical Consultation to draft a legally-binding instrument on
port State measures to prevent, deter and eliminate illegal,
unreported and unregulated fishing**

**Rome, Italy
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<<Korea's Position on the Proposed Redraft of Article 9 and 17>>

April 23, 2009

After having consultations with the relevant authorities and industries, Korea has decided to express its reservation on sponsoring the proposed redraft of Article 9 and 17, resulted from the New York informal meeting on March 19 and 20. The reasons for such position are as follows:

- The redrafted Article 9 and 17 do not solve the issue repeatedly raised by Korea that this Agreement should not regulate vessels carrying **fish or fish products that have been previously landed**. Redrafted Article 9.1 says that 'the Party shall deny that vessel the use of port for landing, transshipping, packaging or processing of fish' and '**fish**' here is defined as '**all species of living marine resources, whether processed or not**', which includes fish or fish products that have been previously landed or processed. Redrafted Article 17.1(b) also includes the term 'fish', causing the same problem. This could be solved in many ways:

Japanese proposal discussed at the informal meeting for Article 3.1(b)

- 3.1(b) vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed

Adding the expression 'that have not been previously landed' in the definition of 'fish' in Article 1.1(b)

Adding the expression 'that have not been previously landed' after 'fish' in Article 9.1 and 17.1(b).

Changing the term 'fish' in Article 9.1 and 17.1(b) into 'catch', if it is agreed that catch means only the fish that have not been previously landed

- Regarding Article 9.1(d) (ii), Korea feels the necessity to explain why Korea is being sensitive to supply vessels. There were some countries asking for more enumeration. For that reason, Korea attaches two page notes titled "Korea's Concern Regarding Supply Vessels." We do hope that this would facilitate other countries' understanding over our position and hopefully clearing up some of the ambiguities the current draft Agreement has.

<<Korea's Concern Regarding Supply Vessels>>

April 23, 2009

Korea has repeatedly expressed its concern over the broad scope of vessels subject to the Port State Agreement and the main part of the concern is to do with supply vessels, in particular fuel vessels (tankers). The reasons behind such concern are as follows:

- Supply vessels do not always know and are unable to confirm all the time whether they are interacting with IUU vessels or not. **Korea's concern is not about the vessels that are already listed as IUU vessels by regional fisheries management organizations.** We have very good access to such information and can distribute the lists to all Korean supply vessels and educate them to stop supporting such vessels. On this point, we have no problem.
- Our concern is more related to the unpredictability of the vessels **that will be determined as ones engaged in IUU fishing activities by port States based on this Agreement.** These are totally unknown and possibly different from countries to countries since it is up to the discretion of each port State
- If you take a look at the redraft of Article 9.1(d) (proposed in New York meeting), the Party must deny access to port services including refueling and resupplying and etc. when the Party has reasonable grounds to believe that the vessel, at the relevant time, was otherwise engaged in IUU fishing or fishing related activities in support of IUU fishing.
- Supposedly, Korea had reasonable grounds to believe that **a fishing vessel A** was engaged in IUU activities and denied port services to that vessel. What happens to **a fuel vessel B** that provided fuel to the fishing vessel A right before the vessel A came to Korea's port? Based on the current draft, the fuel vessel B is also subject to the denial of port service, but there is no way for the fuel vessel B to have predicted that the fishing vessel A would be identified as an IUU vessel at the port. Also, since the interpretation regarding the term "reasonable grounds" could be different and when countries currently cannot even agree on what constitutes IUU activities, who can ensure that all the port States would have the same ruling on which vessel was engaged in IUU or not? The same activity could be determined as IUU in a certain port, while, at the other port, the activity could be regarded as non-IUU. This problem arises because we do not have operational definition on IUU activities. This was why Korea insisted having clear list of IUU activities in the Agreement, but that seems to be very difficult at this point.

- Korea agrees in principle that port State has sovereignty over their ports and they should be given the discretion. However, the discretion is only meaningful when it is accompanied with some degree of predictability on the part of vessels and with some balance.
- The current draft does not stop here. If you take a look at Article 11.3(a) in chairperson's text, if the vessel has been denied entry or use of port in accordance with this Agreement, it would be considered as priority for inspection at every port of the Parties. The fuel vessel B mentioned above would be identified as priority for inspection whenever it comes to ports of the Parties, just because it provided fuel to IUU fishing vessel without having any clue provided in advance that the vessel A will be determined as IUU.
- As was mentioned at the COFI in March, the current draft does not have any listing and delisting procedure for IUU vessels. The listing procedure adopted at regional fisheries management organizations is quite reasonable because it provides an opportunity for all the members to argue that a certain vessel is IUU vessel with accompanying evidence and the flag State also has a chance to counter that argument and the final list is drawn up at the annual meeting when all the Parties are present. Also, the list is reviewed every year. If the current draft could be changed in a way that could provide such clear procedure for listing IUU and delisting IUU, we will have no problem to follow it.
- The bottom line is that we are willing to provide necessary information and education and to modify the current or enact new regulation when necessary to discourage our supply vessels from supporting IUU vessels. However, in doing that, we need **clear procedure and clear guidelines based on which supply vessels can make judgment on whether to provide support or not.**