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SUBMITTED BY VANUATU

VANUATU CAPACITY DISPUTES “*ESMERALDA C*”

SUMMARY

Executive Summary: This document completes Vanuatu first submission CAP15.INF. B tabled during both the 16th meeting of the Permanent Working Group on fleet Capacity and the 88th Extraordinary Meeting of the IATTC

It provides additional information in support of the legitimacy of Vanuatu claim over the capacity transfer occurred in 2005 upon deletion of the then Vanuatu flagged vessel F/V Esmeralda C.

It clearly demonstrates that this transfer of capacity to Panama was performed by the IATTC Secretariat without authorization from the Vanuatu Competent Authorities.

Proposed concrete solution: to consider the request favorably without further need for review, but conditioned the activation of the capacity on the approval by the Commission, at the first possible opportunity.

INTRODUCTION

1. F/V Esmeralda C was first registered with Vanuatu on 19th June 2001 and deleted from the same Registry on 4th January 2005. Throughout the flag deregistration process, Vanuatu competent Authorities did not produce document in support of the transfer of the fishing capacity.
2. Despite the lack of formal approval to transfer the Vanuatu fishing capacity to Panama, and based on one document signed by a then terminated Vanuatu IATTC Commissioner, the IATTC Secretariat processed the transfer of Vanuatu fishing capacity to Panama.
3. It is fact that, at the time of the transfer of the fishing capacity, the IATTC Secretariat should have checked the IATTC records of Vanuatu IATTC Commissioner to ensure that the signatory of such Vanuatu fishing capacity transfer was at the time of signing this document a dully appointed Vanuatu IATTC Commissioner.
4. In 2014, Vanuatu submitted document CAP15. INF B. tabled during both the 16th Session of the Permanent Working Group on Fleet Capacity (PWGFC) as well during the 88th Extraordinary Meeting of the IATTC. While the PWGFC considered favorably Vanuatu Claim, the Commission at its 88th Extraordinary meeting could not reach a consensus on the ground that Vanuatu claim was not legitimate according to the EU.

5. This document aims at demonstrating that Vanuatu claim was and still is as legitimate as the Guatemala, Ecuador and Venezuela cases that have all been approved by the Commission during the 88th Extraordinary meeting.

FISHING CAPACITY TRANSFER REQUESTED BY THE ESMERALDA C OWNER REPRESENTATIVE BUT NOT AUTHORIZED BY VANUATU

1. On 13th January 2005, the Attorney at Law, acting on behalf of its client – Esmeralda C owner, did request the Vanuatu International Shipping Registry (VMS) the authorization to transfer the fishing capacity to Panama. They were advised to contact directly the Vanuatu Fisheries Department (Mr. Moses Amos (then Vanuatu IATTC Commissioner) or Mr. Christophe Emelee) on the ground that VMS was not competent.
2. On 17th January 2005, the Attorney at Law informed VMS that they had not been granted said authorization and requested whether they could be provided with additional contact details. They were once again invited to contact Mr. Moses Amos or Mr. Christophe Emelee (current Vanuatu IATTC Commissioner).
3. On 26th January 2005, the Attorney at Law sent a last email to the Fisheries Department acknowledging that without such formal authorization the transfer of the fishing capacity was not possible.
4. No authorization was granted.

REGISTRATION INTO THE REGISTRY OF PANAMA AND THE SUBSEQUENT INCLUSION IN THE IATTC REGIONAL REGISTER OF VESSELS

1. F/V Esmeralda C was incorporated into the Registry of Panama on 28th January 2005 and notified by fax to the IATTC Secretariat on 17th March 2005 (and noted in the IATTC internal records on 21st March 2005).
2. On March 17th 2005, Panama faxed two documents to the IATTC Secretariat:
 - a. A notification letter to the IATTC Director informing him on the inclusion of the F/V Esmeralda C into the Register of Panama, and
 - b. A letter issued by a then terminated Vanuatu IATTC Commissioner dated 26th January 2005 authorizing the Vanuatu Fishing Capacity transfer.
3. On 11th May 2005, Panama requested the inclusion of Esmeralda C into IATTC Regional Register of Vessels along with the Vanuatu fishing capacity.

VANUATU FISHING CAPACITY TRANSFER AUTHORIZATION SIGNED BY A THEN TERMINATED VANUATU IATTC COMMISSIONER

1. The letter produced by Panama on March 17th to the IATTC Secretariat in support of the transfer of the Vanuatu fishing capacity was dated January 26th 2005 and signed by a Vanuatu IATTC Commissioner terminated on January 21st 2005 as shown in the IATTC Commissioner records.

THE IATTC SECRETARIAT WRONGLY PROCESSED THE TRANSFER OF THE VANUATU FISHING CAPACITY TO PANAMA.

1. The IATTC Secretariat processed the transfer of the Vanuatu fishing Capacity to Panama upon presentation of a document signed by a then terminated Vanuatu IATTC Commissioner dated 26th January 2005.
2. Upon receipt of this authorization letter on March 17th, the IATTC Secretariat should have ensured that the signatory of this Authorization was a duly appointed Vanuatu IATTC Commissioner at the time of signature.
3. A simple check on the IATTC Commissioner Records would have indicated that the signatory of said Vanuatu authorization had been terminated on January 21st 2005.
4. It is a fact that the IATTC Secretariat failed to verify the authenticity of the letter produced by Panama which could have prevented such illegal transfer of fishing capacity.

VANUATU CAPACITY CLAIM IS AS LEGITIMATE AS THE ECUADOR, VENEZUELA AND GUATEMALA CAPACITY CLAIM HAVING ALL A COMMON ROOT.

1. After carefully analyzing each of the above case that were all considered favorably by the Commission at its 88th Extraordinary Session in October 2014, it has become evident that the IATTC Secretariat has always either misunderstood the requests then made by the IATTC Members or acted without the necessary precautions.
2. In the case of Venezuela explained in document CAP15.INF.E, the Venezuela fishing capacity was transferred to Panama by the IATTC Secretariat despite the lack of supporting documents from Venezuela.
3. In the case of Guatemala explained in document CAP15.INF.A, the Guatemala fishing capacity was transferred to Panama by the IATTC Secretariat despite the lack of proper fishing capacity authorization transfer from Guatemala.
4. In the case of Ecuador (Roberto M), the Ecuador fishing capacity was transferred to Panama by the IATTC Secretariat despite the clear indication from Ecuador that the Capacity would remain under the Flag of Ecuador.
5. Similarly, in the case of Vanuatu, the Vanuatu fishing capacity was transferred to Panama by the IATTC Secretariat despite the lack of proper fishing capacity authorization transfer from Vanuatu. Indeed, on March 17th 2005 upon receipt of the so called Vanuatu fishing capacity transfer authorization dated 26th January 2005, a simple check of the IATTC Commissioner records would have indicated the IATTC Secretariat that the Vanuatu authorization produced by Panama was simply not valid.

CONCLUSION

Vanuatu invites the Commission to consider the request favorably without further need for review, but conditioned the activation of the capacity on the approval by the Commission, at the first possible opportunity.