



29 September 2022

(22-7305)

Page: 1/7

Negotiating Group on Rules

NEGOTIATING GROUP ON RULES - FISHERIES SUBSIDIES

**REPORT BY THE CHAIR, H.E. MR SANTIAGO WILLS TO
THE NEGOTIATING GROUP ON RULES**

26 September 2022

INTRODUCTION

1. Good afternoon colleagues, it is great to see all of you again. First and foremost, I hope that you and your families had a good and healthy summer break.

2. I know that we all needed a break after the very intense experience of MC12 when the WTO, based on the work of this Negotiating Group, met the mandate in SDG Target 14.6 by adopting the new multilateral Agreement on Fisheries Subsidies. I want to express my thanks to all delegations for your support to me as Chair throughout this arduous process. I know that many of you are continuing your hard work on fisheries subsidies, by assisting your authorities to take the necessary steps to deposit your acceptances of the Agreement as soon as possible so that it enters into force quickly and starts delivering its benefits for the sustainability of the ocean and the blue economy, and that you will soon embark on the second wave of the negotiations mandated in the Agreement.

FAREWELL

3. As I have already shared with some of you, my time as the Ambassador of Colombia to the WTO and hence as Chair of the Negotiating Group on Rules comes to an end as of the turn of the month – on 30 September. So the reason I called this meeting is to convey my thanks and best wishes to all of my fellow Heads of Delegation and the other delegates with whom I have had the privilege to work with closely since I assumed the Chair in November 2019.

4. I cannot overstate my appreciation for the cooperation, good will, and constructive engagement of all delegations throughout my time as the Chair. We have worked our way through some complex and at times difficult moments, yet I could always count on each one of you to engage with an open mind and to work with me and other delegations to find solutions. This was the key that allowed us to progressively advance our collective process – even during the worst of the pandemic and even international conflict – and finally deliver an outcome in this long-standing negotiation. And I should emphasize the word collective – everything that we have achieved has come from all of you working together.

5. Now, with the MC12 outcome on fisheries subsidies, your work is entering an entirely new phase. As you know, the WTO now has two fisheries subsidies workstreams, both of which are crucial for the Agreement to operate effectively in disciplining fisheries subsidies.

6. The first workstream relates to entry into force and then implementation of the new Agreement. As I just mentioned, I hope that all Members will deposit your instruments of acceptance quickly, so the Agreement enters into force. And of course, for the Agreement to have a real-world impact on subsidization and sustainability, Members must fully implement it, in good faith.

7. The second workstream relates to continuing the negotiations. Pursuant to the Ministerial Decision of 17 June, the Negotiating Group is tasked with continuing to work on outstanding issues, with the aim of making recommendations to MC13. And I have full confidence that you will deliver on that.

RETREAT

8. As you know, a dedicated retreat on Fisheries Subsidies is planned for 10 October to brainstorm on how to approach this "second wave" of negotiations on fisheries subsidies. Although I will not be the Chair of this Group by then, I remain available to provide whatever assistance I can to delegations.

EXPLANATORY NOTE OF THE AGREEMENT

9. Now, I would like to address one question that has been raised with me more than a few times – what exactly happened during the Ministerial Conference?

10. In particular, I know that many of you are still wondering how and why some of the changes were made in the Agreement compared to the earlier version sent to Ministers in document WT/MIN(22)/W/20 (the W/20 text). And while I myself am still trying to recall everything that happened over the course of the five nights and four and a half days of the Conference, allow me to use this opportunity to share some of my recollections.

11. As you all know, over the course of MC12 Ministers engaged very intensively on fisheries subsidies, on different issues and in different configurations, aiming to bridge the remaining gaps. Through several meetings on different configurations with most delegations and a couple of overnight sessions with several Ministers, the W/20 text went through a distillation process where provisions that all could accept were starting to be identified. That version of the text was presented in the early hours of 16 June 2022 and then again later in the morning of that same day. Towards the end of the day of 16 June 2022, and after many discussions throughout the day, a group of Heads of Delegation representing the main active Members and groups further distilled the document that became the final text of the Agreement. Again, all this by identifying the provisions in the W/20 text that all could accept, by temporarily setting aside provisions where consensus had not emerged, and introducing a new final Article containing a termination clause. That clause was introduced at the insistence of Members wanting to ensure that the remaining issues would continue to be the subject of further negotiations, and not simply abandoned.

12. Turning now to the specific changes in the final Agreement compared to its earlier version in the W/20 document.

Articles 1 and 2

13. Article 1, defining the scope of the fisheries subsidies disciplines in the Agreement, and Article 2 containing definitions were unchanged from those in the W/20 draft text.

Articles 3 and 4

14. Article 3 contains the disciplines on subsidies contributing to IUU fishing, and Article 4 addresses subsidies to overfished stocks. These provisions remain the same as those in the W/20 text, other than their final paragraphs, Articles 3.8 and 4.4, respectively, providing for special and differential treatment (SDT) in the form of a "peace clause".

15. The peace clause for developing Members, including least developed country (LDC) Members, means that the disciplines do apply to those Members but are not subject to the dispute settlement procedures during the specified period of two years from entry into force, and within a specified geographical limit. While the two-year period was unchanged from the W/20 text, the geographical limit in the Agreement is the Member's exclusive economic zone (EEZ), compared with 12 nautical miles in the W/20 text. A further change is that the W/20 text limited the peace clause to subsidies for low income, resource-poor and livelihood fishing or fishing related activities, while the peace clause in the Agreement contains no limitation in respect of the type of fishing it covers. These changes were linked to the omission from the Agreement of the more substantive SDT provisions on subsidies for low income, resource-poor and livelihood fishing or fishing related activities that appeared in Article 5.5 of the W/20 text, which were among the group of provisions not retained in the final text. I will go through that group of provisions next.

Article 5

16. Article 5 in the Agreement, now entitled "Other subsidies", reflects certain disciplines in the W/20 text on which Members agreed and which did not fall within the provisions of Articles 3 and 4.

17. I would recall that Article 5 in the W/20 text contained extensive draft disciplines on subsidies contributing to overcapacity and overfishing as follows:

- The core disciplines in the overcapacity and overfishing pillar of W/20 consisted of Article 5.1 and the qualifications in Article 5.1.1, reflecting the so-called "hybrid" approach. This approach comprised a list of presumptively prohibited subsidies qualified by sustainability-based elements;
- Related to the provisions of Article 5.1 including 5.1.1 of W/20, were the special and differential treatment provisions in Article 5.5. These consisted of a transition period in respect of those provisions, as well as exemptions from them for developing country Members with a small share of global catch, and for developing country Members' subsidies for low income, resource-poor and livelihood fishing;
- Article 5.2 of the W/20 text was a standalone prohibition of subsidies contingent on fishing outside a Member's jurisdiction;
- Article 5.3 provided for a prohibition of all subsidies to fishing or fishing related activities in the high seas – that is, outside of any coastal Member's or coastal non-Member's jurisdiction and outside the competence of any RFMO/A; and
- Article 5.4 of W/20 required the subsidizing Member to take special care and exercise due restraint when granting subsidies to vessels not flying its flag.

18. Although these provisions of Article 5 of the W/20 text were the subject of a great deal of focused work at MC12, Ministers ultimately were not able to bridge the differences of view over the provisions of Articles 5.1 and 5.1.1 and the related SDT provisions in Article 5.5, or on the prohibition on subsidies contingent on fishing outside a Member's own jurisdiction in Article 5.2. Members were able to agree, however, on the prohibition of all subsidies to fishing or fishing related activities in the unregulated high seas; and on the due restraint provision relating to subsidies to vessels not flying the flag of the subsidizing Member. These provisions were retained as new Articles 5.1 and 5.2 in the Agreement. At the same time, Members further agreed that, for coherence, the other due restraint provision of the W/20 text, on subsidies where the status of the stocks being fished is unknown – which had appeared in Article 11.1 of the W/20 text – should be moved into the new Article 5 of the Agreement, as Article 5.3.

19. The title of Article 5 of the W/20 text was "Subsidies contributing to overcapacity and overfishing". When some of the mentioned provisions were omitted, and despite maintaining some of the provisions, Members agreed to rename Article 5 "Other subsidies".

Article 6

20. Article 6 contains a specific provision for Least Developed Country (LDC) Members, namely that Members shall exercise due restraint in raising matters involving an LDC Member, and take into account the specific situation of those Members. This provision appeared as Article 6.3 of the W/20 text. The other provisions of Article 6 of that text were not retained as they provided SDT for LDCs in respect of the non-retained Article 5.1 of the W/20 text.

Article 7

21. Article 7, concerning technical assistance and capacity building for developing and LDC Members to support their implementation of the disciplines, including the establishment of a voluntary funding mechanism, was retained from the W/20 text without modification. This provision was not the subject of further drafting work during MC12.

Article 8

22. Article 8 contains provisions on notifications. Compared with the counterpart provisions of the W/20 text, the following modifications were agreed at MC12:

- First, Article 8.1(a)(ii) from the W/20 text, concerning the provision of certain catch data, was moved to Article 8.1(b) as new subitem (v) to reflect concerns of some developing Members that mandatory provision of such information might be too burdensome for them. In the Agreement, the provision of such information is required "to the extent possible";
- Second, Article 8.2 in the W/20 text, a requirement to notify non-specific fuel subsidies, was not retained in the Agreement. Prior to MC12, this provision had emerged as a possible compromise on how to address the sensitive issue of non-specific fuel subsidies in the disciplines. At MC12, Ministers were unable to reach consensus on this provision or any other language relating to such subsidies;
- Third, bracketed Article 8.3(b) of the W/20 text, on notification of information relating to the use of forced labour, was not retained in the Agreement as consensus was not reached at MC12;
- And fourth, Article 8.7 in the W/20 was not retained, mainly because this provision was dependent on the provisions of Article 5 of that text that also were not retained in the Agreement; and
- The other provisions of Article 8 were renumbered in the Agreement to reflect the omission of these elements.

Articles 9 and 10

23. Article 9 which contains provisions relating to institutional arrangements, and Article 10 which sets forth the provisions related to dispute settlement, remain the same as in the W/20 draft text.

Article 11

24. Article 11 "Final Provisions" contains provisions that do not readily belong elsewhere in the Agreement. As I mentioned, what was Article 11.1 in the W/20 document was moved to Article 5 of the Agreement. The remaining paragraphs of this provision were retained in the Agreement and renumbered to account for the change of placement of former Article 11.1.

Article 12

25. Article 12 is new language that does not have a predecessor provision in the Agreement. As you know, it does two things. It envisages further work by Members to develop "comprehensive disciplines", and it contains a termination mechanism. In particular, and as elaborated in paragraph 4 of the Ministerial Decision adopting the Agreement, the further work to develop these disciplines is meant to address the outstanding issues, where agreement was not reached at MC12. Article 12 sets forth an outer limit of four years from the date of entry into force of the Agreement for this work to be completed, without which the Agreement will automatically terminate unless Members decide otherwise. This provision was inserted to ensure that the outstanding issues would continue to be the subject of further focused work by the Negotiating Group. And although the Agreement itself provides four years from entry into force for this work, the Ministerial Decision makes clear that Members should aim to complete it much sooner, in particular by MC13.

CLOSING

26. I hope that this explanation provides some useful clarifications on what has happened during MC12 and how we arrived at the final version of the Agreement.

27. Before I conclude, I would like to touch upon the selection of a new Chair. I understand that the GC Chair is beginning consultations on this, and I am optimistic that the process will be able to conclude soon and to the satisfaction of all Members. I wish you all every success in resolving this essential question quickly – and urge all delegations to be pragmatic in this regard. The most important qualities for any Chair are to be able to maintain a neutral role in organizing and guiding the discussions, by carefully listening to, and taking on board, the concerns of all Members. It goes without saying that whoever takes up this position will bear this constantly in mind.

28. Having worked with all of you over the past very intense and productive three years, I have every confidence that the Negotiating Group will efficiently carry out the further negotiations on outstanding issues and make recommendations on these by the next Ministerial Conference, as per the Ministerial Decision.

29. With that, I conclude my statement.

30. But I would not want to yield the floor yet, without sharing with you some final words of appreciation.

31. I wanted to start by thanking the WTO Membership. I would like to thank all of you for the trust that you deposited on me when selecting me as the Chair of the NGR, almost exactly three years ago. Everyone knew at that time that we had an enormous task before us and you allowed me to lead it, for that I'm thankful. But for me, it was not only about a task. I will forever be grateful to all of you, as you granted me an opportunity. You granted me an opportunity to do good to the WTO, an Organization that I love, but also to do good to the world. Colleagues, friends, with the Fisheries Subsidies Agreement -and of course its implementation - we are contributing to a better world, we are contributing to ocean sustainability and we are contributing to the livelihoods of vulnerable communities across the globe. It is not many times, if any, that in one's professional career or even in one's life, that one is granted the opportunity to make a real difference. You, Members, have granted me that opportunity, and collectively we worked towards making it real. For that I will always be grateful.

32. I would also like to thank my dear Fish Team: Clarisse Morgan, Sainabou Taal, Strahinja Ivanovic, Tisseree Coppia, Anne Richards, Assem Shakirtova and those who already left the WTO - John Finn and Hugh Seongseok Lee. What an amazing journey we had! The work you did to support the NGR and to support me as Chair was incredible. Not only did you put so many long hours and weekends having to withstand me, but also the way you have supported the NGR and me has been with the utmost rigor, discipline, diplomacy and kindness. The WTO, we as Members, are lucky to have all of you on our team. And may I thank as well an honorary member of our Fish Team working behind the scenes but with equal discipline and rigor: the Information and External Relations Division - particularly Jessica Hermosa, Roxana Paraschiv and Jana Borges. And also a huge mention to our interpreters. What an amazing and tough job you do for the organization! Thank you so much!

33. I also want to deeply thank DDG Angela Ellard. Also part of the Fish Team. Since the first day I felt your support and your will to help Members move forward and push through several challenges in order to achieve this outcome. Your contribution to the process and to the final outcome was enormous. I must say that you also fed me during the late hours of MC12, when I felt my energy was depleting almost as fast as our precious fish stocks. Thank you, Angela.

34. And of course, I wanted to thank you, DG. Ever since you took office in the WTO it became clear that your enthusiasm, your energy and your wit would help us achieve the outcome we achieved. You were key in getting this outcome. And as for me personally, I want to thank you for your trust, DG. As an anecdote, I first realized how you trusted the process I had put forward when over a year and half ago, the day you started your work as DG, you said in an interview live on CNN, and I quote "... we must support Ambassador Santiago Wills so that we get results this year". Wow! That gave me a boost of confidence that we were going on the right track and we just needed to persist - and of course then you came in with all your might, and the rest is history.

35. As you can see, there were many thank you notes pending. But I'm not done. I also wanted to thank all the staff of my Mission - of the Permanent Mission of Colombia to the WTO - Nicolás Palau, Lorena Rivera, Gustavo Guarín, Abdul Fatat, Manuel Chacón, Daniel Arboleda, Juan Pescador, Cristián Abarzua and Mariana Velasco. Some have already left Geneva but some are still here. The work they've done these past three years has been outstanding and it allowed me to put a lot of my focus on the fisheries subsidies negotiations. Particularly, I would like to thank Nicolás that supported me through thick and thin and helped me get a lot of non-fisheries related work done. Thanks so much.

36. And last but not least, and probably most importantly, I wanted to thank my family for all their support through these past years. Particularly, I would like to thank my wife, Juliana Barrios. She is the real hero here - for three years I was moody, I was grumpy and I confess that I neglected some

of my home chores, that she readily took on herself to do. She gave me the strength and courage to persist even when our negotiations were darker than ever. She was my inspiration and guiding light. And sometimes she also sent her delicious cupcakes and cookies to light up the mood of our meetings. Thank you, Juli.

37. Colleagues, friends: for me it has been an honour to work with all of you. And it has been the privilege of a lifetime to work collectively to make a real difference to the world.

38. In the coming years there is a lot of work to be done – on fisheries and elsewhere. The work will not be easy – it never is – and some will be tempted to look at it as a challenge, a burden or even as a hurdle. But ultimately it needs to be approached and grasped as an opportunity; as an opportunity to keep doing good to this Organization and to the whole global community.

39. Muchas gracias; thank you very much; merci beaucoup!

RESPONSE TO AN ISSUE RAISED DURING THE MEETING

Because a few Members raised the issue of a legal review of the text, I would recall my statement to the General Council contained in Annex 2 of JOB/GC/315. For ease of reference, that statement can be found in the Attachment to this document.

ATTACHMENT**STATEMENT BY AMBASSADOR SANTIAGO WILLS (COLOMBIA),
CHAIR OF THE NEGOTIATING GROUP ON RULES AT THE 25 JULY 2022
GENERAL COUNCIL (CONTAINED IN JOB/GC/315)**

1. Today, some delegations have alluded to a possible process of legal review, based on the process that was followed for the Trade Facilitation Agreement after the Bali Ministerial Conference in 2013. Allow me to reiterate what I mentioned on the 7 July HoDs meeting in this regard.
2. Let us be reminded that the decisions relating to fisheries subsidies at MC12 are substantively different from those pertaining to the TFA. In particular, at MC12 Ministers took a decision to adopt, in three languages, the protocol to amend Annex 1A of the Marrakesh Agreement by inserting the Agreement on Fisheries Subsidies once it enters into force, and to immediately open the Agreement for acceptance by Members. And should I add that the Agreement in three languages is attached to the protocol. Thus, as of 17 June 2022, the Agreement is open for acceptance without further steps to be taken, aside, of course, from the domestic procedures of the Members to deposit instruments of acceptance. This is exactly the same procedure as was followed for the 2005 amendment of the TRIPs Amendment. At Bali, by contrast, while Ministers decided that the substantive TFA negotiations had been concluded, they also decided at the same time to establish a Preparatory Committee to conduct a legal review of the TFA to prepare it for acceptance. Given the difficulties throughout the process, the protocol that actually opened the TFA for acceptance was adopted by the General Council about one year after the Ministerial Conference. This is a fundamentally different legal posture than what the Ministers agreed to at MC12.
3. On translations of the Agreement, I would recall that French and Spanish versions of the text should have been familiar to Members, given that every version of the draft text that I have provided to Members for consideration since June 2020 has been circulated immediately in all three languages. This includes both WT/MIN(21)/W/5 and WT/MIN(22)/W/20, which were sent to Ministers in November last year and June this year, before MC12. All of that said, I would encourage any delegation that wishes to raise any questions to contact me as soon as possible. Under well-known treaty procedures, if there are translation corrections on which Members can agree, there are processes for the Depositary – the DG – to circulate technical rectifications for approval by Members.
4. I should add, also, that some Members have already informed me that they have begun their domestic procedures of acceptance of the instrument, including, for instance, already having submitted the adopted text of the Agreement to their Congress or Parliament. In other words, domestic procedures from Members have already started on the basis of what was decided during MC12.
5. Having said all of this, if there are specific concerns of consistency, of translations, or anything else, please reach out to me. As I mentioned in the 7 July HoDs – when I shared the details on the process that I'm reiterating today – my door is still open for all delegations to reach out and have the discussions we need to have.
6. Thanks, Director-General. Thank you, Chair.
