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**Negotiating Group on Rules**

**ADDITIONAL PROVISIONS ON FISHERIES SUBSIDIES**

DRAFT TEXT

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*Note from the Chair of the Negotiating Group on Rules:*

*This document reproduces the text of the document sent by Minister Facilitator, H.E. Mr Martin Eyjólfsson, to all Members via e-mail on 1 March 2024 during the 13<sup>th</sup> WTO Ministerial Conference.*

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**ADDITIONAL PROVISIONS ON FISHERIES SUBSIDIES****DRAFT TEXT**

*Note: This document is without prejudice to any Members' positions or views, whether or not reflected herein.*

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**ARTICLE A: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING**

A.1<sup>1</sup> No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing. For the purposes of this paragraph, subsidies that contribute to overcapacity or overfishing include<sup>2</sup>:

- (a) subsidies to construction, acquisition, maintenance, modernisation, renovation, or upgrading of vessels;
  - (b) subsidies to the purchase or maintenance of machines and equipment for vessels (including fishing gear and engine, fish-processing machinery, fish-finding technology, refrigerators, or machinery for sorting or cleaning fish);
  - (c) subsidies to the purchase/costs of fuel, ice, or bait;
  - (d) subsidies to costs of personnel, social charges, or insurance;
  - (e) income support of vessels or operators or the workers they employ except for such subsidies implemented for subsistence purposes during seasonal closures;
  - (f) price support of fish caught;
  - (g) subsidies to at-sea support; and
  - (h) subsidies covering operating losses of vessels or fishing or fishing related activities.
- A.1.1 (a) A subsidy is not inconsistent with Article A.1 if the subsidizing Member demonstrates that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.<sup>3</sup> Such demonstration shall include an explanation of how those measures ensure, or can reasonably be expected to ensure, that the stock or stocks in the relevant fishery or fisheries are maintained at a biologically sustainable level and shall be made through a notification by the subsidizing Member as soon as practicable and no later than six months after a new subsidy program comes into effect, and thereafter in the Member's regular notifications of fisheries subsidies under Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and Article 8.1 of the Agreement on Fisheries Subsidies (AFS).<sup>4,5</sup>

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<sup>1</sup> For greater certainty, Article A.1 does not apply to subsidies to the extent they regard stocks that are overfished.

<sup>2</sup> For greater certainty, the subsidies listed in this provision shall not be deemed to contribute to overcapacity or overfishing when granted or maintained in accordance with Article A.1.1.

<sup>3</sup> For the purposes of these Additional Provisions, the term "biologically sustainable level" is the level determined by a coastal Member or a coastal non-Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence. Members acknowledge that the biologically sustainable level of stocks may be influenced by factors beyond the control of the subsidizing Member.

<sup>4</sup> A coastal Member that is not the subsidizing Member shall not be required to provide data to enable the subsidizing Member to invoke Article A.1.1.

<sup>5</sup> For greater certainty, a Member's existing subsidies are to be included in such regular notifications as from the date of entry into force of these Additional Provisions.

(b) With the exception of Members covered by Article B.5 and notwithstanding Article A.1.1(a), for a developing country Member that is:

- (i) neither amongst the 10 largest providers of fisheries subsidies by annual aggregate level of fisheries subsidies as notified to the Committee on Fisheries Subsidies (the Committee) under Article C.4;
- (ii) nor significantly engaged<sup>6</sup> in fishing or fishing related activities in any area farther than one Food and Agriculture Organization of the United Nations (FAO) Major Fishing Area<sup>7</sup> beyond the one(s) adjacent to the Member's territorial sea<sup>8</sup>;

a subsidy is not inconsistent with Article A.1 if the subsidizing Member demonstrates through its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8.1 of the AFS that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.<sup>9,10</sup>

(c) The information<sup>11</sup> provided in the notification referred to in Article A.1.1(a) and Article A.1.1(b) shall enable other Members to effectively evaluate the subsidy according to the conditions set out in Article A.1.1 and shall include the following for the relevant fish stock or stocks:

- (i) conservation and management measures in place;
- (ii) status of the fish stocks<sup>12</sup> (e.g., overfished, maximally sustainably fished, underfished, or unknown) and the reference points used, and whether such stocks are shared<sup>13</sup> with any other Member or are managed by a Regional Fisheries Management Organization or Arrangement (RFMO/A)<sup>14</sup>;
- (iii) catch data by species or group of species<sup>15</sup> as compiled by a Member; and
- (iv) information on the fleet capacity as compiled by a Member.

A.1.2 Any Member may, at any time, seek clarification regarding the notifications and information referred to in this Article. If a Member seeks such clarification, or considers that a notification or information under this Article has not been provided, the Member may bring the matter to the attention of such other Member or to the Committee. Where a Member has brought such

<sup>6</sup> For the purposes of these Additional Provisions, a Member shall be considered to be significantly engaged in the fishing or fishing related activities referred to in this subparagraph if the combined volume of marine capture production of its vessels or operators in the relevant FAO Major Fishing area(s) exceeds 2 per cent of the total volume of marine capture production of that Member. A flag State that does not subsidize the activities described in this provision shall not be deemed to be engaged in such activities.

<sup>7</sup> As delineated in the FAO Major Fishing Area map in effect at the time of adoption of these Additional Provisions, as circulated by the WTO Secretariat.

<sup>8</sup> For the purposes of this subparagraph, if an FAO Major Fishing Area that is adjacent to the Member's territorial sea is directly connected to another FAO Major Fishing Area through a maritime canal, the latter area will be deemed to be one FAO Major Fishing Area beyond the one(s) adjacent to a Member's territorial sea. For a coastal Member without a territorial sea, the expression "a Member's territorial sea" in this Article shall mean "a Member's jurisdiction".

<sup>9</sup> A coastal Member that is not the subsidizing Member shall not be required to provide data to enable the subsidizing Member to invoke Article A.1.1.

<sup>10</sup> For greater certainty, a Member's existing subsidies are to be included in such regular notifications as from the date of entry into force of these Additional Provisions.

<sup>11</sup> For greater certainty, a Member is free to supplement, revise, or correct its notifications. It is understood that the demonstration called for under Article A.1.1(a) or Article A.1.1(b) may include information contained in any supplemented, revised or corrected notifications, as well as in written answers provided by the subsidizing Member to written questions received as part of the review process set out in Article A.1.2.

<sup>12</sup> A Member shall provide information on the status of the assessed fish stocks based on the best scientific evidence available to it.

<sup>13</sup> The term "shared stocks" shall have the same meaning as in footnote 14 of the AFS.

<sup>14</sup> For greater certainty, for fish stocks managed by an RFMO/A, status of the fish stocks provided by the Member shall include available stock status information from the RFMO/A.

<sup>15</sup> For multispecies fisheries, a Member instead may provide other relevant and available catch data.

a matter to the attention of the subsidizing Member or the Committee, the subsidizing Member shall respond to the request as quickly as possible in writing and in a comprehensive manner.

- A.2 (a) Members shall refrain, to the greatest extent possible, from granting or maintaining subsidies contingent upon, or tied to, actual or anticipated fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction (whether solely or as one of several other conditions), unless the requirements in subparagraph (b) are met.<sup>16,17</sup>
- (b) For any subsidy referred to in subparagraph (a), Article A.1 shall apply. Such a subsidy is not inconsistent with Article A.1 if the subsidizing Member also:
- (i) makes the demonstration required under Article A.1.1(a) for the relevant subsidy<sup>18</sup>; and
  - (ii) in addition to the information referred to in Article A.1.1(c), provides information on the conservation and management measures governing the subsidized fishing or fishing related activities such as national legislation or competent RFMO/A(s), and provide the following information for the relevant subsidy:
    - (1) the amount of the subsidy;
    - (2) fleet capacity in the fishery for which the subsidy is provided; and
    - (3) catch data by species or group of species in the fishery for which the subsidy is provided.<sup>19</sup>
- (c) The Committee on Fisheries Subsidies shall assess the information provided under Article A.2(b)(ii) in accordance with the cycle of regular notifications under Article 25 of the SCM Agreement and Article 8.1 of the AFS, report on the total aggregate value of such subsidies, identify trends and the impact on small island developing state Members and least-developed country (LDC) Members, and report such findings to the Council for Trade in Goods.

## ARTICLE B: SPECIAL AND DIFFERENTIAL TREATMENT

B.1 Article A.1 shall not apply to LDC Members. A graduated LDC Member may grant or maintain the subsidies referred to in Article A.1 to fishing or fishing related activities for a maximum of X years after a decision of the UN General Assembly to graduate that Member from the "Least Developed Countries" category.<sup>20</sup>

B.2 A developing country Member<sup>21</sup> may grant or maintain the subsidies referred to in Article A.1 if its share of the annual global volume of marine capture production does not exceed 0.8 per cent as per the most recent published FAO data as circulated by the WTO Secretariat. A Member remains exempted until its share exceeds this threshold for three consecutive years. It shall be re-included in Article B.2 when its share of the global volume of marine capture production falls back below the threshold for three consecutive years.

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<sup>16</sup> The mere fact that a subsidy is granted or maintained to vessels or operators that may be engaged in fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction (e.g., fishing in a nearby Member's exclusive economic zone (EEZ) pursuant to traditional or historical practices or arrangements or reciprocal fisheries management and utilization arrangements, including relating to migratory stocks) shall not for that reason alone be considered to be contingent upon, or tied to, such fishing or fishing related activities.

<sup>17</sup> For a Member whose maritime zone under national jurisdiction does not have a definitively determined EEZ, the limit shall be that provided by international law, including the law of the sea.

<sup>18</sup> For greater certainty, this demonstration shall be made regardless of whether the subsidizing Member would be otherwise covered by Article A.1.1(b) or Article B.

<sup>19</sup> For multispecies fisheries, a Member instead may provide other relevant and available catch data.

<sup>20</sup> Article B.3(b) and (c) shall apply, *mutatis mutandis*, to a graduated LDC Member not covered by the special and differential treatment provided for in Article B.2, from the end of the period referred to in the second sentence of Article B.1.

<sup>21</sup> For greater certainty, this includes developing country Members that are graduated LDC Members falling within the 0.8 per cent threshold after the expiry of the transition period referred to in Article B.1.

- B.3 (a) A developing country Member not covered by the special and differential treatment provided for in Article B.1 or Article B.2 may grant or maintain the subsidies referred to in Article A.1 to fishing or fishing related activities within its EEZ, and in the area and for species under the competence of an RFMO/A through which the Member is authorized to engage in such fishing or fishing related activities, for a maximum of X years after the entry into force of these Additional Provisions.<sup>22</sup> A developing country Member intending to invoke this provision shall inform the Committee in writing within one year of the date of entry into force of these Additional Provisions.
- (b) Subsidies granted or maintained under subparagraph (a) shall be exempt from actions based on Article A.1 and Article 10 of the AFS for a period of two additional years after the end of the period referred to in the first sentence of subparagraph (a).
- (c) A developing country Member to which subparagraph (b) applies may request no more than two two-year extensions of the period referred to in that subparagraph through the Committee. The Committee shall take into account the specific circumstances of that Member, and shall give due and sympathetic consideration to developing country Members that demonstrate concrete progress toward implementing Article A.1.
- B.4 (a) A developing country Member may grant or maintain the subsidies referred to in Article A.1 for small scale and artisanal fishing or fishing related activities that are primarily low income, resource poor or livelihood in nature<sup>23</sup> as operationally defined by that Member.
- (b) A developing country Member availing itself of subparagraph (a) shall, in its regular notification under Article 25 of the SCM Agreement and Article 8.1 of the AFS, notify the subsidies provided under this provision and provide its operational definition(s) of the fishing or fishing related activities referred to in subparagraph (a), and promptly inform the Committee of any modifications thereafter.<sup>24</sup>

B.5 Developing country Members with competent fisheries management capabilities are encouraged to make a binding commitment not to avail themselves of Article B.1, Article B.2, Article B.3, and Article B.4.<sup>25</sup>

## **ARTICLE C: NOTIFICATION AND TRANSPARENCY<sup>26</sup>**

C.1 Article 25 of the SCM Agreement and Article 8 of the AFS shall apply to these Additional Provisions, with the additions provided for in Article A, Article B, and this Article.

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<sup>22</sup> When the FAO data circulated by the WTO Secretariat for the purpose of Article B.2 show for the first time that a Member's share of annual global volume of marine capture production exceeds the threshold in Article B.2 for three consecutive years, such that the Member is no longer covered by Article B.2, Article B.3(b) and (c) shall apply *mutatis mutandis* to that Member as from that date. If the date on which the Member ceases to be covered by Article B.2 on this basis occurs during the period referred to in the first sentence of Article B.3(a), the Member shall benefit from the remainder of that period.

<sup>23</sup> For greater certainty, the activities described in this paragraph do not include significantly commercial fishing or fishing related activities. A range of characteristics may be taken into account as guiding points when considering "small scale and artisanal fishing or fishing related activities" including: size of fishing vessel; level of motorisation; level of mechanisation; type of fishing gear; refrigeration or storage on board; labour or crew; ownership; time commitment (full time, part-time, seasonal); location, distance, and duration of fishing trips; disposal of catch; utilization of catch (level of processing, preservation, or value-add); and integration into economy or management system.

<sup>24</sup> A Member may meet this obligation by providing to the Committee an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information.

<sup>25</sup> Such binding commitments include statements made by eligible Members to [...], such as those made [placeholder for references to such binding commitments made before adoption of these Additional Provisions] and will be recorded by the Council for Trade in Goods and will be compiled and published publicly on the WTO website.

<sup>26</sup> Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be available for the purposes of implementing these Additional Provisions.

C.2 Each Member shall notify to the Committee in writing on an annual basis of:

- (a) any vessels and operators for which the Member has information that reasonably indicates the use of forced labour, along with relevant information to the extent possible; and
- (b) a list of any agreements in force, or existing arrangements, for obtaining access to the fisheries resources of another coastal Member or non-Member, and such notification shall consist of:
  - (i) the titles of the agreements or arrangements;
  - (ii) a list of their parties; and
  - (iii) to the extent possible, the full text of the agreements or arrangements.

A Member may meet this obligation by providing an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information. This notification may be presented either individually or jointly by Members who are parties to an agreement or arrangement.

C.3 Notwithstanding Article 1 of the AFS, and to the extent possible, each Member shall notify to the Committee in writing on an annual basis of its fuel subsidies granted or maintained to fishing or fishing related activities that are not specific within the meaning of Article 2 of the SCM Agreement.

C.4 Each Member shall notify to the Committee information that is necessary for the determination of its annual aggregate level of fisheries subsidies, building upon its existing notifications under Article 25 of the SCM Agreement and Article 8.1 of the AFS. The first notification of this information shall be submitted not later than 120 days from the date of entry into force of these Additional Provisions. Thereafter, this information shall be provided in the Member's regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8.1 of the AFS.<sup>27</sup> Each Member shall submit this information through a template the content and form of which shall be previously adopted by Members.

C.5 Within one year from the date of entry into force of these Additional Provisions, the WTO Secretariat shall compile and make publicly available a list of Members and their respective annual aggregate levels of fisheries subsidies, on the basis of the information referred to in Article C.4. The list shall be ranked in descending order by annual aggregate level of fisheries subsidies. The list shall be updated in accordance with the cycle of regular notifications under Article 25 of the SCM Agreement and Article 8.1 of the AFS. For the purpose of establishing the list, the WTO Secretariat may request technical clarifications from the subsidizing Member concerning the notified subsidies. The Committee shall review the list at its regular meetings.

C.6 A Member may invoke Article A.1.1 or Article B.4 only in respect of subsidies which it has notified to the Committee under Article 25 of the SCM Agreement and Article 8.1 of the AFS.

C.7 Nothing in these Additional Provisions requires the provision of confidential information, including confidential business information.

#### **ARTICLE D: OTHER OVERCAPACITY- AND OVERFISHING-RELATED PROVISIONS**

- D.1 (a) Not later than five years after the date of entry into force of these Additional Provisions, the Committee shall review their operation. This review shall assess, in particular, the overall impact of these Additional Provisions on overcapacity and overfishing, distant water fishing or fishing related activities, aggregate levels of fisheries subsidies, and aggregate levels of subsidies contingent upon, or tied to, actual or anticipated fishing or fishing related activities in areas beyond national jurisdiction, and whether these Additional Provisions have increased economic benefits to small island developing state

<sup>27</sup> In accordance with the applicable periodicity of such notifications, including as provided for in footnote 13 of the AFS.

Members and LDC Members from the sustainable use of marine resources. The review shall also identify any necessary modifications to further strengthen the operation or improve the effectiveness of these Additional Provisions, taking into account their objectives and UN Sustainable Development Goals target 14.6 and target 14.7. Such modifications may include quantitative limitations or reduction commitments to subsidies of the major subsidizers. If either the aggregate levels of subsidies or aggregate levels of subsidies contingent upon, or tied to, actual or anticipated fishing or fishing related activities in areas beyond national jurisdiction have increased, the Committee shall recommend quantitative limitations or reductions unless it determines that other modifications are more appropriate. In considering any modifications to these Additional Provisions, the Committee shall take into account the information provided under Article A.2 (c) and Article C.4.

- (b) The Committee shall report to the Council for Trade in Goods the outcomes of this review, including any resulting proposals to amend the text of these Additional Provisions. The outcomes of this review and any recommendations to further strengthen the operation or improve the effectiveness of these Additional Provisions shall be considered at the first session of the Ministerial Conference that follows the conclusion of the review. Thereafter, these issues shall be addressed in the periodic reviews under Article 9.4 of the AFS on the basis of the modalities in subparagraph (a).

D.2 Before granting a subsidy, and notwithstanding these Additional Provisions, a Member shall consider the consequence of the subsidy on overcapacity or overfishing.

#### **ARTICLE E: RELATIONSHIP WITH AGREEMENT ON FISHERIES SUBSIDIES**

E.1 These Additional Provisions, together with the AFS, constitute the comprehensive disciplines referred to in Article 12 of the AFS and achieve the comprehensive agreement on fisheries subsidies in accordance with paragraph 4 of the Ministerial Decision on the AFS adopted at the Twelfth Session of the WTO Ministerial Conference.<sup>28</sup> Other than as provided under Article E.1, the Additional Provisions do not modify or nullify any rights or obligations as provided by the AFS.

E.2 Article 1, Article 2, Article 6, Article 7, Article 8, Article 9, Article 10, and Article 11 of the AFS shall apply, *mutatis mutandis*, to these Additional Provisions<sup>29</sup>, in addition and without prejudice to any cross-references in these Additional Provisions to specific provisions of the AFS.

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<sup>28</sup> [WT/MIN\(22\)/33](#) – [WT/L/1144](#).

<sup>29</sup> For greater certainty, Article 10.2 of the AFS shall apply to consultations and the settlement of disputes under Article A, and Article A shall not prevent a Member from granting a subsidy for disaster relief in accordance with Article 11.1 of the AFS.