



Negotiating Group on Rules

NEGOTIATING GROUP ON RULES – FISHERIES SUBSIDIES

**REPORT BY THE CHAIR, AMBASSADOR EINAR GUNNARSSON TO
THE NEGOTIATING GROUP ON RULES**

Addendum

INTRODUCTION

1. This Addendum provides background, context, and explanations for the draft "Additional Provisions on Fisheries Subsidies" that I have circulated today in document TN/RL/W/278 (document W/278). As indicated on its cover page, the document reproduces the "Advanced Draft" text that the Minister Facilitator, Permanent Secretary of State Martin Eyjólfsson, e-mailed to all delegations during MC13, in the early morning of 1 March. This Addendum also reports on the activities that took place during the Ministerial Conference, both leading up to and following the circulation of the Advanced Draft.

2. Regarding the contents of the document, the Advanced Draft represents the fruit of very hard and constructive work at MC13 across a broad spectrum of Members, under the Minister Facilitator's able leadership. In particular, the document reflects the important progress made at MC13 on a number of issues where convergence until then had been elusive. The Advanced Draft distributed by Secretary Eyjólfsson on 1 March did not carry a document symbol and had only an informal status. Underscoring the importance of capturing and preserving this text, many Members expressed during the March meeting of the General Council the desire to build on the work done and the progress achieved on fisheries subsidies at MC13. My aim in now reproducing the contents of that text as a formal document in the TN/RL/W series is to ensure that it can easily be retrieved and used as the basis going forward.

3. The process that led to this text took place over the first days of MC13 in consultations of various configurations, often convened at late hours and on short notice. I wish to sincerely thank all delegates for your availability and the constructive spirit that you brought to all of these engagements. While some of the articulated positions were strong, all delegations expressed their views clearly, and it was very encouraging to see the concerted collaborations across well-known divides to seek solutions on very challenging issues that were still open when we arrived in Abu Dhabi. I share the view expressed by many delegations, in the last hours of MC13 and again in the General Council in March, that we came extremely close in Abu Dhabi to concluding the second wave of negotiations. The credit for this goes to Ministers and their delegates. Without the commitment and trust placed in the Minister Facilitator, in the process, and in me, we could not have made this progress. So again, I wholeheartedly thank all Members, on my own behalf and on behalf of Secretary Eyjólfsson.

PROCESS AT MC13

Substantive work led by the Minister Facilitator

4. The work on fisheries subsidies at MC13 led by Secretary Eyjólfsson officially began with the 27 February dedicated Working Session. During that session, Members shared comments on the draft text that I had sent to Ministers on 16 February in document WT/MIN(24)/W/10 (document W/10), reflecting our work during the Fish Month of meetings of the Negotiating Group on Rules from mid-January to mid-February. Members' comments during the Working Session largely reflected the positions they had maintained in the final months of negotiations before MC13.

5. Right after that session, in the time designated for convergence-building on fisheries subsidies, we worked in three breakout groups to engage in more in-depth discussions on the issues identified by Members as requiring attention. The Breakout Sessions were chaired by Senator the Honorable Tim Ayres (Assistant Minister for Trade of Australia), H.E. Mr Kim Yong Gan (Minister of Trade and Industry of Singapore), and H.E. Ambassador Dacio Castillo (Permanent Representative of Honduras to the WTO). On behalf of the Minister Facilitator, I sincerely thank all of these session Chairs for having put themselves at the service of these negotiations.

6. During the Breakout Sessions, Members mainly focused on the following provisions of document W/10: Article A.2 – subsidies contingent on distant water fishing; Article B.4 – subsidies to small scale and artisanal fishing; Article B.5 and B.5 ALT – unavailability or non-use of SDT by certain developing Members; Article C.2(a) – transparency in respect of the use of forced labour; Article C.3 – transparency in respect of non-specific fuel subsidies; and the overall balance among the nominal figures in the text, including those that remained bracketed or indicated with an "X". Some Members also continued to advocate for different approaches to the main discipline as reflected in Article A.1 and A.1.1 of document W/10. The interventions during the Breakout Sessions thus essentially elaborated on those made during the Working Session, and confirmed the above provisions of document W/10 as most Members' priority areas for further work.

7. Following these structured MC13 sessions, Secretary Eyjólfsson began a series of consultations with a wide range of delegations on the issues that had been identified. This began with several engagements with a regional group of Members that sought substantive changes to the main discipline in Articles A.1 and A.1.1. The engagements with this group allowed a deeper understanding of their positions and the issues they were raising, which ultimately led to the identification of a compromise largely based in a strengthened review provision in Article D.1, as explained below.

8. In addition, Secretary Eyjólfsson engaged with many other delegations and groups (a total of about 80 delegations) to share orally an outline of what a package on the outstanding issues referred to in paragraph 9 might consist of, and to gauge reactions. Additionally, in the afternoon of 28 February, Secretary Eyjólfsson sent to all Members a transparency video message explaining this process.

9. Despite ambitions of presenting the elements of a package deal in a textual form, by the middle of the night between 29 February and 1 March we were not able to circulate such a document because consultations continued non-stop. At that point, Secretary Eyjólfsson decided instead to circulate a complete version of the text incorporating the elements of the package on which he had been consulting with Members. This text was the Advanced Draft e-mailed to Members in the early morning of 1 March. The text contained no bracketed language, but instead included yellow highlight in five places which, at that time, were deemed to require resolution before being able to present Members with a final text for adoption. These five highlights are:

- the transition period placeholder in Article B.1;
- the transition period placeholder in Article B.3;
- the placeholder in footnote 25 for references to Member statements of commitment not to avail themselves of SDT;
- Article C.2(a) on transparency in respect of forced labour; and
- Article C.3 on transparency in respect of non-specific fuel subsidies.

10. Throughout the day on 1 March, work continued, with consultations among Members working together, consultations led by the Minister Facilitator, and in the late afternoon a meeting convened by the Chair of MC13 of a group of Heads of Delegations. That meeting was followed by further consultations by the Minister Facilitator, and consultations among delegations. Even after it was clear that reaching a consensus on Additional Provisions on Fisheries Subsidies would not be possible at MC13, a diverse group of Members continued to work together on their own, and identified further refinements to the Advanced Draft on which they could agree. This process is further elaborated in paragraphs 56-59 below.

11. This broadly-held and strong commitment to reaching an outcome in these critically important negotiations was truly inspiring. I remain hopeful that we will be able to build on this work and finally achieve consensus as many Members have called for.

Members' linguistic and technical review of WT/MIN(24)/W10

12. In parallel with the substantive work, Members worked on a linguistic and technical review of document W/10, in response to a communication I had sent on 19 February, just a few days after circulating that document. In the communication I invited Members, with a view to ensuring quality control and making any necessary fixes, to carefully check the document for linguistic or technical issues in any of the language versions, and to share those issues with the Secretariat. Over the following period until MC13, numerous Members did communicate issues that they considered warranted technical corrections.

13. Based on those inputs from Members, during MC13 Secretary Eyjólfsson and I prepared a version of document W/10 reflecting only those technical changes, and not addressing the substantive issues. This text with technical changes was sent to Members via e-mail during the evening of 28 February. These technical changes then were incorporated into the Advanced Draft circulated on 1 March as further elaborated below.

CONTENTS OF THE "ADVANCED DRAFT" TEXT SENT BY THE MINISTER FACILITATOR TO DELEGATIONS ON 1 MARCH, REPRODUCED IN DOCUMENT TN/RL/W/278

14. This section describes the main provisions of the Advanced Draft reproduced in document TN/RL/W/278, with reference to the counterpart provisions of document W/10.

Article A.1

15. Article A.1, including Articles A.1.1(a), A.1.1(b), A.1.1(c), and A.1.2, comprise the core discipline on subsidies contributing to overcapacity and overfishing. These provisions remained largely unchanged from those in document W/10. The only modifications are technical adjustments in the footnotes (substitution of "*For greater clarity*" with "*For greater certainty*" in several footnotes and substitution of "*Article*" with "*subparagraph*" in footnote 8), and the addition of a sentence in footnote 8 specifying that for coastal Members without a territorial sea, the expression "*a Member's territorial sea*" [...] *shall mean 'a Member's jurisdiction'*".

16. Although Article A.1 in document W/278 is substantively unaltered compared with the same provision of document W/10, at Abu Dhabi there was an intensive debate over a proposal by a regional group of Members to strengthen the discipline by complementing the hybrid discipline in Article A.1 and Article A.1.1 with a standstill and reductions of subsidy amounts applicable to the largest providers of fisheries subsidies. Other Members, however, considered that the hybrid discipline already reflected a careful balance that should not be disturbed and which had been reached after many years of unsuccessful discussions of different approaches to the discipline, including subsidy caps and reductions. Ultimately, this issue was resolved through a compromise to strengthen the review clause in Article D.1. The revised review clause is discussed below.

Article A.2

17. Subsidies contingent on fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction (subsidies to distant water fishing) have long been the subject of a draft provision that would have completely prohibited them, possibly subject to certain exemptions. The basis of this provision is the widely-held view that these subsidies pose a high risk to sustainability. However, strong opposing views had persisted, and this provision of document W/10, which was entirely in brackets and also contained internal brackets, was the subject of intensive work both in the run-up to and at MC13. As a result of that work, a new compromise approach to this Article was developed in Abu Dhabi. Article A.2 of document W/278 is among the provisions with the most changes compared to its counterpart in document W/10.

18. In document W/278, Article A.2(a) provides that Members shall refrain, to the greatest extent possible, from granting or maintaining subsidies to distant water fishing. Subparagraph (b) further stipulates that for any such subsidies that are provided, the subsidizing Member would need to make

the demonstration provided for in Article A.1.1(a) (the top tier of the two-tier hybrid approach), regardless of the tier that otherwise would apply to that Member. In addition, the subsidizing Member would need to provide certain additional information, that is: the conservation and management measures applicable to the subsidized fishing and fishing related activities, the amount of the subsidy, the fleet capacity in the fishery in question, and data on catch.

19. Subparagraph (c) of Article A.2, which has no counterpart in document W/10, introduces a Committee review process for the information referred to in Article A.2(b) in accordance with the cycle of regular notifications under Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and Article 8.1 of the Agreement on Fisheries Subsidies (AFS). In the context of this review, the Committee would be required to report on the total aggregate value of these types of subsidies, identify trends and the impact of such subsidies on small island developing state Members and LDC Members, and report its findings to the Council for Trade in Goods.

20. It should be noted that the total aggregate value of subsidies as referred to in Article A.2(c) pertains to subsidies contingent on distant water fishing. This is therefore different from the annual aggregate level of all fisheries subsidies referred to in Article C.4. The information provided under Article A.2(c) as well as that provided under Article C.4 would be taken into account in the review of the Additional Provisions provided for in Article D.1.

Article B.1

21. Two textual modifications were made to Article B.1 compared to the previous version in document W/10. The first is the deletion of the phrase "*The prohibition under*" before "*Article A.1*" at the beginning of the provision. The second is the deletion of the phrase "*not covered by the special and differential treatment provided for in Article B.2*" after the phrase "*A graduated LDC Member*" in the second sentence. Both of these modifications were technical and were already included in the document circulated by the Minister Facilitator on 28 February containing technical adjustments to document W/10.

22. As mentioned in the Addendum to document W/10, the phrase "*not covered by the special and differential treatment provided for in Article B.2*" was included in that document to reflect the general understanding that the transition period granted to graduated LDC Members under Article B.1 would be irrelevant to graduated LDC Members that fall below the *de minimis* threshold provided for in Article B.2. This is because such Members – having become developing Members after their graduation and accounting for such a low share of the global volume of marine capture production – could avail themselves of the SDT exemption contained in Article B.2. However, that language gave rise to a concern on the part of LDC Members regarding what would happen to a graduated LDC Member that fell under Article B.2 at the time it graduated but subsequently, and still during the Article B.1 transition period, exceeded the *de minimis* threshold for three consecutive years. To avoid the potential for confusion on this point, the phrase "*not covered...*" was not retained. In addition, the clarification that the *de minimis* exemption of Article B.2 applies to graduated LDC Members falling within the *de minimis* threshold "*after the expiry of the transition period of Article B.1*" has been re-inserted in footnote 21, as explained in paragraph 25 below.

23. By the morning of 1 March, Members had not yet substantively engaged on the length of the transition period for graduated LDCs, although this was an area where it was clear that high-level engagement would be needed to reach agreement. Due to the limited extent of discussion, the placeholder of "X" was retained. It was highlighted in yellow by the Minister Facilitator to indicate that it required focused work, including in relation to the transition period provided for in Article B.3 (also still referred to by a placeholder of "X"). It should be noted that some Members have maintained that the value of the X in Article B.1 should be equal to the value of the X in Article B.3, while other Members disagree.

Article B.2

24. Article B.2 presents a substantive evolution from the previous version in document W/10, in that the previous brackets were removed from around the 0.8 percent *de minimis* threshold. While some Members continued to advocate for either higher or lower figures, the views of most Members had stabilized around 0.8 percent, such that this figure can be seen as a compromise outcome. It also has been in the text for a long time and has a counterpart in the AFS.

25. Article B.2 also contains some linguistic changes with regard to its previous formulation. The first is the deletion in the first sentence of the redundant language "*to fishing and fishing related activities*" after "*referred to in Article A.1*". The second is a reformulation of footnote 21 – previously footnote 19 in document W/10 – reflecting the technical modifications made to Article B.1 explained above. Precisely, the new language in the footnote clarifies that Article B.2 also applies to "*developing country Members that are graduated LDC Members*" (rather than just mentioning "*graduated LDC Members*" as in document W/10) falling within the *de minimis* threshold "*after the expiry of the transition period referred to in Article B.1*". While the latter phrase did appear in a footnote in the prior document TN/RL/W/277, it was omitted in document W/10 to reflect that the transition period for graduated LDC Members would apply only to such Members with a share of global marine capture production above the *de minimis* threshold. Having deleted this limitation in the Advanced Draft, the sentence "*after the expiry of the transition period referred to in Article B.1*" was brought back to the text as a technical adjustment.

Article B.3

26. The language of Article B.3 was unchanged from its previous version in document W/10, other than the deletion of the wording "*Except as provided for in Article B.5*" at the beginning of Article B.3(a), and the substitution of the word "*provision*" with "*subparagraph*" in the second line of Article B.3(c). The first of these modifications reflects the changes to Article B.5 that are explained in paragraphs 35-36 below.

27. Similar to the transition period for graduated LDC Members in Article B.1, there was limited substantive engagement at MC13 regarding the length of the transition period contained in Article B.3. In discussions that did take place, Members reiterated previously mentioned figures for the transitional period, such as 7 years, 10 years, or 25 years. It was widely recognized that high-level engagement would be needed to reach agreement on the length of this transition. Thus, the placeholder of "X" was retained and highlighted in yellow to signal it as an open matter to be resolved.

Article B.4

28. Article B.4 exempting subsidies to small scale and artisanal fishing or fishing related activities was the subject of intensive and targeted discussions during MC13. The structure of the provision – with the first paragraph setting out the exemption and the second containing the notification obligations – is the same as in document W/10. Regarding the substance, however, important changes were introduced.

29. The first such substantive difference is that the geographical limitation was not retained in Article B.4(a) in document W/278. Members would recall that the geographical limit with two bracketed figures, 12 and 200 nautical miles, had long been in the text. The 12-mile limit had been introduced as a proxy to address the concerns of some Members that have considered it necessary to have a tangible limitation to the area in which subsidies would be exempt from disciplines under Article B.4, to prevent terms such as "small scale" or "artisanal" fishing from giving rise to a loophole through which subsidies could be provided for commercial-scale fishing operations. Counter to this, numerous other Members have argued that there should be no geographical limitation on the activities that could be subsidized under this provision, and that if such a limitation had to be included, it should be the EEZ or up to 200 nautical miles from the baselines. In the final phase of preparation for MC13, some Members previously advocating for a 12-mile limit began to indicate that if that limit could not be agreed, it might be better to include no geographical limit at all, while also stressing that such a change would need to be balanced by certain transparency obligations.

30. This brings us to the second substantive modification contained in Article B.4. Following the deletion of the geographical limitation from Article B.4(a), Article B.4(b) was partially reformulated to include the obligation for developing Members availing themselves of this exemption to notify the "*subsidies provided under this provision*" together with the Member's "*operational definition(s)*" of small scale and artisanal fishing or fishing related activities referred to in Article B.4(a).

31. Another notable change to Article B.4 is contained in footnote 23 (previously footnote 21 in document W/10). Specifically, a first sentence was added to the footnote clarifying that the activities

covered by this provision do not include "*significantly commercial*" fishing or fishing related activities. In this regard, it has to be noted that several delegations raised concerns with regard to the expression "*significantly commercial*" because they considered the term to be unclear and that it might negatively affect those small scale and artisanal fishing operations that have a limited commercial nature. Specifically, reference was made to small scale and artisanal fishers in developing Members that sell part of their catch to the local market to earn income for their primary needs. After the Advanced Draft was distributed, some Members proposed using alternative language, like "*industrialised*" fishing, rather than "*significantly commercial*" fishing, as mentioned in paragraph 57(a) below.

32. With regard to footnote 23, the suggestion of several Members to include "*location*" and "*distance*" together with "*duration of the trips*" among the characteristics to consider when defining small scale and artisanal fishing was taken on board. Members supported this addition as it reflects the elements referred to in the FAO *Illuminating Hidden Harvests* report for the identification of such types of fishing. Also, the placement of the footnote was changed to better clarify to what it refers.

33. Finally, and similar to Article B.3, the wording "*Except as provided for in Article B.5*" was deleted at the beginning of Article B.4(a), reflecting the changes to Article B.5 that are explained in paragraphs 35-36 below.

Article B.5

34. Article B.5 on excluding certain developing country Members from availing themselves of the SDT provisions was presented in two alternatives in document W/10. The first (Article B.5) automatically excluded developing Members from accessing the SDT provided for in Article B.3 and Article B.4 if they were "*significantly engaged*" in far distant water fishing, and the second (Article B.5 ALT) encouraged developing Members "*with competent fisheries management capabilities*" to make binding commitments not to avail themselves of all SDT provisions.

35. At and before MC13, although recognizing the intent behind the first alternative in Article B.5, several developing Members maintained that introducing an automatic exclusion from SDT would give rise to systemic issues within the Organization. For this reason, these Members expressed strong opposition to such wording, even if many of them would not have been affected by it. On the contrary, other Members appreciated that formulation of Article B.5 because it would provide legal certainty regarding which developing Members would not be covered by SDT. Given the forceful opposition to the first alternative, Article B.5 ALT emerged as the preferred option for a great majority of Members.

36. Document W/278 therefore uses Article B.5 ALT of document W/10. This change rendered the reference to Article B.5 in Article B.3 and Article B.4 of document W/10 superfluous and is the reason why, as mentioned in paragraphs 26 and 33 above, the wording "*Except as provided for in Article B.5*" was removed from those provisions in document W/278.

37. The wording of Article B.5 in document W/278 is the same as Article B.5 ALT of document W/10, that is, a voluntary binding commitment for certain developing Members not to avail themselves of SDT. This also includes the footnote – footnote 25 in document W/278 that was footnote 26 in document W/10 – stipulating that such binding commitments will be recorded by the Council for Trade in Goods and will be compiled and published publicly on the WTO website. The footnote in document W/278 contains a placeholder and a yellow highlight to indicate that further details will have to be worked out to make Article B.5 fully operational and binding. For instance, any affected developing Member would have to make a statement declaring its intention not to avail itself of the SDT provisions contained in Article B, and the reference to where that statement was formally recorded would be reflected in footnote 25. The most affected Member had clearly signalled at the Working Session a readiness to make such a statement before formal adoption of the Additional Provisions.

Article C.1

38. Article C.1 in document W/278 is unchanged in substance from its previous version in document W/10. The words "*The provisions of*" at the beginning of the Article were deleted as a technical adjustment.

Article C.2

39. The preposition "to" was added before "*the Committee*" in the chapeau of Article C.2 as a technical adjustment.

40. Article C.2(a) on transparency regarding the use of forced labour is the fourth element in document W/278 that is highlighted in yellow. This reflects that while many Members requested its deletion, other Members saw it as being of paramount importance. It was widely understood that this is an issue that would be dealt with at the last moment before adoption and keeping in mind certain interlinkages with other issues such as Article B.5, as elaborated below in paragraph 57.

41. Article C.2(b) pertaining to transparency regarding government-to-government fisheries access agreements or arrangements is the same as in document W/10, other than the clarification that these agreements or arrangements are for obtaining access to the "*fisheries resources*" (rather than to "*fisheries*") of another coastal Member or non-Member, and the addition of a sentence in the chaussette about methods of notification. Using language that mirrors similar language contained in Article 8.6 of the AFS, that sentence provides that the notification under this provision may be presented either individually or jointly by Members that are parties to a fisheries access agreement or arrangement.

Article C.3

42. Article C.3 on transparency regarding non-specific fuel subsidies is not changed from the previous version in document W/10, except for the addition of the preposition "to" in front of "*the Committee*" in the first sentence, as in the chapeau of Article C.2, as a technical adjustment. However, it is highlighted, similar to Article C.2(a), to reflect the binary divergence between, on one side, many Members strongly requesting the deletion of this provision, and on the other, some Members supporting its retention. Following the distribution of the Advanced Draft, this led to a proposal for the deletion of this provision, as mentioned in paragraphs 57(c) below.

Article C.4

43. While the substance of Article C.4 remains unaltered from the previous version in document W/10, two small technical adjustments have been made for clarification. These are the addition of the words "*date of*" prior to "*entry into force*" (the fourth line of the provision) and the substitution of "*agreed*" with "*adopted*" (the last line).

Article C.5

44. Article C.5 remains unchanged from its previous version in document W/10.

Article C.6

45. Article C.6 of document W/278 presents two main differences from its previous version. The first is the removal of the brackets around the provision. As mentioned above, the decision not to include brackets in this version of the text was made to reflect the evolution of the discussions.

46. The second difference is the deletion of the reference to Article B.2 and Article B.3. In this regard, some developing Members had expressed the view that conditioning the invocation of Article B.2 and Article B.3 to notification, as provided for in Article C.6 of document W/10, would be inconsistent with the SDT principle. This is because both SDT exemptions apply automatically: Article B.3 (transition period) at the entry into force of the Additional Provisions; and Article B.2 if a developing Member's share of the global volume of marine capture production falls below the *de minimis* level set at 0.8 percent for three consecutive years. To address these concerns, the above-mentioned references have been deleted from Article C.6.

Article C.7

47. Article C.7 has not been changed from its previous formulation in document W/10.

Article D.1

48. Article D.1 in document W/10 introduced for the first time a review clause on the specificities of the Additional Provisions, modelled on the one contained in Article 9.4 of the AFS. This provision was the subject of extensive negotiations in Abu Dhabi, including during high-level meetings, the last of which took place in the night of 29 February ahead of the circulation of the Advanced Draft the following morning. Article D.1(a) in the Advanced Draft was the result of a compromise between a regional group of Members that sought to strengthen the basic discipline in Article A.1 and A.1.1, and other Members that considered that the hybrid approach in those Articles already reflected a careful balance after many years of unsuccessful discussions of different approaches to the discipline, including subsidy caps and reductions. The new version of the review clause in document W/278 is more detailed and significantly stronger than the one contained in document W/10.

49. Article D.1(a) in document W/278 foresees a review of the operation of the Additional Provisions not later than five years after the date of their entry into force. This is much sooner than was foreseen in Article D.1 of document W/10.

50. In addition, Article D.1 in document W/278 is more detailed than the previous version in document W/10 as it specifically mentions more elements that the Committee will be expected to review. These are the impact of the Additional Provisions on overcapacity and overfishing, distant water fishing, the aggregate levels of fisheries subsidies, and the aggregate levels of subsidies contingent on distant water fishing, as well as whether the Additional Provisions have increased the economic benefits to small island developing state Members and LDC Members from the sustainable use of marine resources. The provision also mandates the Committee to identify any modifications, including quantitative limitations or reduction commitments, to further strengthen the operation or improve the effectiveness of the Additional Provisions with regard to their objectives as well as UN Sustainable Development Goals 14.6 and 14.7. The new version additionally specifies that if information provided under Article A.2(c) and Article C.4 shows that the two aggregate levels of fisheries subsidies mentioned above have increased, and unless it deems other modifications to be more appropriate, the Committee shall recommend quantitative limitations or reductions.

51. Article D.1(b) was introduced in the Advanced Draft and is reflected in document W/278, according to which the outcomes of the review as well as any recommendations to further strengthen the operation or improve the effectiveness of the Additional Provisions are to be considered at the first session of the Ministerial Conference that follows the conclusion of the review, and thereafter in the periodic reviews provided for in Article 9.4 of the AFS. Article D.1(b) also maintains the obligation of the Committee to report the outcomes of the review and any resulting proposals to amend the text of the Additional Provisions to the Council for Trade in Goods, as previously contained in Article D.1 of document W/10.

Article D.2

52. Article D.2 remains unchanged from its previous version in document W/10.

Article E.1

53. Although the substance of the previous version of Article E.1 is maintained, small changes have been made for clarification and as technical adjustments.

54. First, "along" was substituted with "together" and "shall" has been deleted before the verbs "constitute" and "achieve" in the first sentence. Second, a sentence has been added to clarify that, other than as provided under this provision "*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*", the Additional Provisions do not modify or nullify the rights and obligations contained in the AFS.

Article E.2

55. Article E.2 remains unchanged from its previous version in document W/10.

FURTHER WORK BY MEMBERS AT MC13 BASED ON THE ADVANCED DRAFT

56. As noted in the Introduction section, following Secretary Eyjólfsson's circulation of the Advanced Draft, and especially following the meeting convened by the MC13 Chair, work among Members continued. This included, in the last hours of the Conference, work in a sizeable and diverse group of Members, including Members of various interest groups in the negotiations, who spontaneously sat together on their own to discuss the Advanced Draft and to try to reach agreement on the remaining open issues. Through this Member-led process, the participants reached agreement among themselves on some changes to the Advanced Draft. The Members involved shared the results of their work with me at the end of the day, just before the MC13 closing session began. However, by that time it was already clear that MC13 would not achieve consensus on the Additional Provisions on Fisheries Subsidies.

57. The changes proposed by that group were as follows:

- a) in footnote 23 to Article B.4 on subsidies to small scale and artisanal fishing, the reference to "*significantly commercial*" fishing was changed to "*industrialised*" fishing;
- b) Article C.2(b)(iii), requiring the notification, to the extent possible, of the full text of foreign access agreements or arrangements, was deleted;
- c) Article C.3 on transparency in respect of non-specific fuel subsidies was deleted;
- d) Article C.6, linking notifications under the SCM Agreement and the AFS to the flexibilities in Article A.1.1 and Article B.4, was deleted;
- e) in Article B.5, regarding voluntary binding commitments of Members not to avail themselves of SDT, a reference to "*Subsidizing*" developing country Members was added, and the reference to "*competent fisheries management capabilities*" was deleted;
- f) in the penultimate sentence of Article D.1(a), the phrase "*shall recommend*" was changed to "*may recommend*"; and
- g) the figures 3 and 8 were introduced for the transition periods referred to in Article B.1 and Article B.3 respectively.

Finally, while the provision in Article C.2(a) on transparency in respect of forced labour was not changed, it was generally understood that it would be further considered before adoption of the Additional Provisions but after an intended statement would have been made by one Member to commit not to avail itself of SDT in accordance with Article B.5.

58. Of these changes, my impression is that the proposed length and formulation of the transition periods in Article B.1 and Article B.3 would clearly benefit from further engagement and consideration among Members.

59. Unfortunately, the further progress by this group of Members was made too late in the schedule of MC13 to be on the agenda of the closing session for all Members' consideration. However, these proposed changes represent the hard compromises that a very diverse group of Members were willing to make to bridge the remaining gaps. As such, it could go a long way toward preparing the Additional Provisions for final adoption by Members. Therefore, I see this progress as significant and worth recording in this Addendum.

CONCLUSION

60. As I continue to think about next steps, my analysis is that we can consolidate and build upon the hard work of Ministers and delegates embodied in the Advanced Draft (now circulated as TN/RL/W/278). In this connection, I am convinced that the above-described work undertaken by the group of Members at the end of MC13 can be helpful for identifying essential further elements needed to finalize the negotiations on the Additional Provisions on Fisheries Subsidies.

61. Using document W/278 as the basis and building upon the above-described further work, a limited number of desirable adjustments can be identified and categorized as follows.

62. The first category would be certain refinements to the text, such as described in paragraphs 57 (a), (e), and (f), the definition in footnote 6 of being "*significantly engaged*" in far distant water fishing, and possibly other issues, which some Members raised during consultations on the Advanced Draft during the course of 1 March.

63. The second category would be the proposed deletion of certain transparency provisions, such as described in paragraphs 57 (b), (c), and (d). Also as noted, the transparency provision on forced labour is generally understood to be further considered after an anticipated binding commitment would be made by a Member not to avail itself of SDT under Article B.5.

64. Finally, the third category would be the transition periods referred to as "X" in Article B.1 and Article B.3. These warrant further engagement with all Members on their length and formulation in order to establish the final balance of the Additional Provisions on Fisheries Subsidies.

65. Furthermore, after Members have agreed on a final package for adoption, a technical and linguistic review should take place. Members engaged in such an exercise for document W/10, and a final document should be subject to the same sort of process.

66. Dear Colleagues, I hope that this Addendum provides you with some useful clarifications on how we arrived at the Advanced Draft and, more generally, on the numerous activities that took place in Abu Dhabi. We have come a very long way, and again this is thanks to the tremendous efforts and commitment of your Ministers and all delegates.

67. This enabled us, at the Ministerial Conference, to identify workable solutions acceptable to a very broad spectrum of Members on issues that have been deadlocked for decades, including the discipline on subsidies contingent on distant water fishing activities, and on the SDT exemption for small scale and artisanal fishing. I commend all of you for the flexibility that you have shown, which enabled us to identify these and the other compromise solutions reflected in and based on the Advanced Draft.

68. It is my hope that we will be able to build on this massive work with the aim of closing the remaining gaps in the near future. I will be consulting with Members in the coming weeks to seek your views on the best way forward. I believe that we can succeed if we remain focused and pragmatic, in the same way as at MC13.

Ambassador Einar Gunnarsson
Chair of the Negotiating Group on Rules
