



Republic of the Philippines
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City
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MEMORANDUM

FOR : **The Directors**
Biodiversity Management Bureau
Ecosystems Research and Development Bureau
Environmental Management Bureau
Forest Management Bureau
Land Management Bureau
Legal Affairs Service

The Administrator
National Mapping and Resource Information Authority

FROM : **The OIC Director**
Policy and Planning Service

SUBJECT : **REQUEST FOR CERTIFICATE OF CONCURRENCE FOR THE RATIFICATION OF THE AGREEMENT ON FISHERIES SUBSIDIES**

DATE : **18 OCT 2023**

This refers to the letter dated 13 September 2023 from Atty. Domingo F. Panganiban, Senior Undersecretary of the Department of Agriculture requesting support through Certificate of Concurrence as a pre-requisite document for the domestic acceptance process to the World Trade Organization – Fisheries Subsidies Agreement (WTO-FSA).

The agreement is aligned with the United Nations Sustainable Development Goal 14.6 provides a framework for the prohibition of certain fisheries subsidies contributing to overcapacity and overfishing while recognizing the need for appropriate and effective special and differential treatment for developing and least-developed countries. In line with this, the World Trade Organization has adopted the Agreement on Fisheries Subsidies during the 12th Ministerial Conference (MC12) on 17 June 2022. For the Agreement to become operational, two-thirds of the WTO Members must deposit their “instruments of acceptance” with the WTO, and members agreed to **continue negotiations on outstanding issues, including overfishing and overcapacity**, with a view to making recommendations by MC13 for additional provisions that would rather enhance the disciplines of the Agreement.


As an update and requisite for the domestic acceptance, the DA-BFAR has recently conducted the National Stakeholders’ Orientation on September 5 in Quezon City, which was attended by the DENR-BMB. The stakeholders expressed their support for the ratification of the WTO-FSA to ensure the long-term sustainability of our fishery resources, expand market access, and promote global cooperation. This is

with the emphasis that we are now moving towards capacity/ fisheries-based fisheries management of our marine resources. Their messages of support were with recommendations to ensure our interests as developing states in the current drafting/ negotiations in crafting the "disciplines" for subsidies contributing to overcapacity and overfishing. This is to ensure special and differential treatment as a developing state and will provide us policy space in our programs in providing support to our small-scale fisheries for developmental, food security, disaster relief, and livelihood purposes.

In this regard, we would like to request for your 1) concurrence on the **World Trade Organization – Fisheries Subsidies Agreement (WTO-FSA)**; and 2) comments (if any) on the latest single text on **the outstanding issues, including overfishing and overcapacity**. Please refer to the attached matrix of relevant documents with corresponding action requested.

Attached is the copy of the relevant documents on the said agreement or it can be accessed through this link: <https://bit.ly/3LZtRqk> for your reference. We would appreciate receiving an advance copy of your **concurrence and/ or comments** as soon as possible **or before October 23, 2023**. Should you have any inquiries, you may contact the Policy Studies Division through tel. no. 8925-1183 or 09454990762 (*Viber-activated*) and via email at psddivision@gmail.com.

For your information and appropriate action, please.



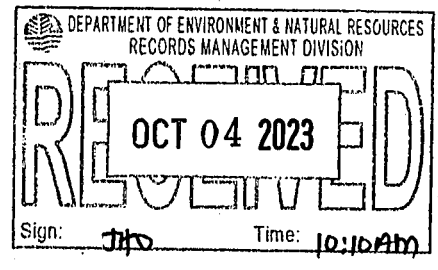
CHERYL LOISE T. LEAL



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13 September 2023

MARIA ANTONIA YULO LOYZAGA
Secretary
 Department of Environment and Natural Resources
 Visayas Avenue, Diliman, Quezon City
 Metro Manila, Philippines



Dear **Secretary LOYZAGA:**

Greetings!

This is regarding our domestic acceptance process to the WTO- Fisheries Subsidies Agreement.

The Agreement is aligned with the United Nations Sustainable Development Goal 14.6, which provides a framework for the elimination of subsidies that support IUUF and the prohibition of certain fisheries subsidies contributing to overcapacity and overfishing while recognizing the need for appropriate and effective special and differential treatment (S&DT) for developing and least-developed countries.

As an update and requisite for the domestic acceptance, the DA-BFAR has recently conducted the National Stakeholders' Orientation on 05 September 2023 in Quezon City. The stakeholders expressed their support for the ratification of the WTO-FSA to ensure the long-term sustainability of our fishery resources, expand market access, and promote global cooperation. This is with the emphasis that we are now moving towards capacity/fisheries-based fisheries management of our marine resources. Their messages of support were with recommendations to ensure our interests as developing states in the current drafting/negotiations in crafting the "disciplines" for subsidies contributing to overcapacity and overfishing. This is to ensure S&DT as developing state and will provide us policy space in our programs in providing support to our small-scale fisheries for developmental, food security, disaster relief, and livelihood purposes.

In relation thereto, the DA-BFAR respectfully requests support and a favorable response from your esteemed office through a Certificate of Concurrence, which we need soonest as a prerequisite document for the domestic acceptance by His Excellency President Ferdinand Romualdez Marcos, Jr. *(please see attached format)*

For clarification, kindly contact Mr. JOEREN S. YLEANA, Supervising Aquaculturist, Capture Fisheries Division at 0995-9955275 or cfid@bfar.da.gov.ph.

Thank you for your consistent support and for sharing the vision of sustainable fisheries development of the country.

Very truly yours,

DOMINGO F. PANGANIBAN
Senior Undersecretary



DA-CO-OSEC-LE20230926-05486

As of 15 June 2023

TRM-Technical Committee on WTO Matters (TCWM)
Distribution List

Bangko Sentral ng Pilipinas

1. **Managing Director Thomas Benjamin B. Marcelo**
International Monetary Affairs and Surveillance Sub-sector
2. **Director Mari-Len R. Macasaquit**
International Relations and Surveillance Department

Attn: Acting Deputy Director Windel Z. Samaniego

Bureau of Customs

1. **Commissioner Bienvenido Y. Rubio**

Attn: Deputy Commissioner Vener S. Baquiran
Ms. Rechilda Oquias, Head of the External Affairs Office
Atty. Julito L. Doria
Atty. Maria Yasmin Obillos-Mapa

Department of Agriculture

1. **Assistant Secretary Noel A. Padre**
Assistant Secretary-designate for Policy and Research

Attn: Ms. Tisha Pia de la Rosa

Bureau of Fisheries and Aquatic Resources

2. **OIC-Director Demosthenes Escoto**
OIC, Bureau of Fisheries and Aquatic Resources

Attn: Assistant Director Isidro Velayo Jr.

Department of Finance

1. **Undersecretary Mark Dennis Joven**
International Finance Group

Attn: Assistant Secretary Neil Adrian S. Cabiles

DTI-Board of Investments

1. **Executive Director Ma. Corazon H. Dichosa**
Industry Development Services

Attn: Director Sandra Marie S. Recolizado

Intellectual Property Office of the Philippines

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OIC-Director Ann N. Edillon
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Office of the President

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Government Procurement Policy Board-Technical Support Office

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Attn: Atty. Maria Dionesia A. Guillermo

Department of Labor and Employment

1. Undersecretary Atty. Benedicto Ernesto R. Bitonio, Jr.
Labor Relations, Policy and International Affairs

Attn: Director Maria Consuelo S. Bacay

Department of Agrarian Reform

1. Undersecretary Jesry T. Palmares
Foreign Assisted and Special Projects Office

Attn: Assistant Secretary Ubaldo R. Sadiarin, Jr.
OIC Director Garland Leila A. Cuarteros

Department of Environment and Natural Resources

1. Undersecretary Jonas R. Leones
Policy, Planning and International Affairs

Attn: OIC Director Cheryl Loise T. Leal

Department of Foreign Affairs

1. Undersecretary Carlos D. Sorreta
Multilateral Affairs and International Economic Relations

2. Assistant Secretary Paul Vincent L. Uy
Office of International Economic Relations

As of 15 June 2023

Department of Transportation

1. **OIC Director Ana Dominique M. Consulta**
International Cooperation Division

National Economic and Development Authority

1. **Undersecretary Rosemarie G. Edillon**
Policy and Planning Group
- Attn: Director Bien Ganapin
Assistant Director Richard Emerson Ballester

Tariff Commission

1. **Chairperson Marilou P. Mendoza**
2. **Commissioner Ernesto L. Albano**
3. **Commissioner Marissa Maricosa A. Paderon**

Department of Justice

1. **Chief State Counsel Dennis Arvin L. Chan**
- Attn: Assistant Chief State Counsel Marlyn L. Angeles
Atty. Ma. Pamelyn A. Omalin

**SUMMARY OF THE TRM-TECHNICAL COMMITTEE ON WTO MATTERS (TRM-TCWM)
10 October 2023**

Please refer to the table below for the agreed actions/next steps, for your reference and guidance.

| Agenda Item | Agreed Actions/Next Steps |
|---|--|
| I. Minutes of the Previous TRM-TCWM Meeting (1 June 2023) | <ul style="list-style-type: none"> TCWM to provide the Secretariat additional comments/inputs on the minutes of the previous meeting on or before 17 October 2023 (Annex A). Absent any additional comments/inputs, the minutes will be considered final. |
| II. Matters Arising from the Minutes of the Previous TRM-TCWM Meeting (1 June 2023) | |
| <ul style="list-style-type: none"> TRIPS Waiver | <ul style="list-style-type: none"> Geneva WTO-PM to provide updates on the outcomes of the TRIPS Council Meeting. A copy of the US ITC Report on the TRIPS Waiver will also be shared with the TCWM once available. |
| <ul style="list-style-type: none"> Philippine Notification Obligations | |
| <ul style="list-style-type: none"> Import Licensing | <ul style="list-style-type: none"> DA already provided their inputs on the US questions |
| <ul style="list-style-type: none"> Implementing Rules and Regulations (IRR) of the MAV Administration for the Rice Tariffication Law | <ul style="list-style-type: none"> DA to update on the status of the IRR and provide the information on the membership of the MAV Council at the next TCWM meeting |
| <ul style="list-style-type: none"> Notifications Required under GATS | <ul style="list-style-type: none"> NEDA to consult with DOJ and Geneva WTO-PM on the implications of notifying the WTO Public Service Act and the EODB Act vis-a-vis PH commitments under the GATS |
| <ul style="list-style-type: none"> SPS National Workshop (15-17 August 2023) | <ul style="list-style-type: none"> Geneva WTO-PM to prepare a report for the TCWM on the outcomes of the workshop |
| <ul style="list-style-type: none"> Accession | <ul style="list-style-type: none"> Geneva WTO-PM to follow up with the WTO Secretariat and provide feedback to TCWM on the BOI's inquiry regarding the reference years for the initial negotiating rights (INRs) TCWM to note the upcoming accessions to the WTO and provide technical inputs, as may be necessary |

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|--|---|
| <p>III. Special WTO Senior Officials' Meeting (SOM) and Related Meetings (20-24 October 2023) and 13th WTO Ministerial Conference (MC13) (26-29 February 2024)</p> | <ul style="list-style-type: none"> • TCWM to note the updates on the Special WTO SOM and Related Meetings (20-24 October 2023) • DA and DFA to attend the Philippine Delegation Briefing on 12 October 2023, 2:30 pm via Zoom |
| <p>IV.A. WTO Reform</p> | <ul style="list-style-type: none"> • Geneva WTO-PM to provide a copy of the recent DSS reform proposals for TCWM's review • TCWM and DFA-OTLA to review the draft letters and notification to formally join the MPIA prepared by Geneva WTO-PM |
| <p>IV.B. Fisheries Subsidies</p> | <ul style="list-style-type: none"> • TCWM to note the updates on the domestic ratification of the FSA • DA-BFAR to undertake the following: <ul style="list-style-type: none"> ○ Present the FSA at the meeting of the Committee on Tariff and Related Matters (CTRM) or the joint CTRM/Technical Committee on TRM, prior to requesting the Certificates of Concurrence (COCs) from the relevant TCWM member agencies ○ As the lead agency, determine the number of agencies with direct competence of the FSA disciplines which will be required to submit the COCs ○ Include the minutes of the CTRM meeting for record purposes, as well as justification on the non-requirement of some agencies to submit COCs, in the documents to be submitted to DFA-OTLA for onward submission to the OP-ODESGA |
| <p>IV.C. Agriculture</p> | <ul style="list-style-type: none"> • TCWM to note the updates on the agriculture negotiations |
| <p>IV. JSI on Services Domestic Regulation</p> | <ul style="list-style-type: none"> • DFA to write the BOC, BIR, DOE, DOLE, DOST, DTI, BOI, MIAA, NTC, and PPA to validate and certify the electronic copies of their COCs; MARINA and DENR to seek agreement in affixing dates on their respective COCs. NEDA to provide contact person/s for said agencies. • NEDA to coordinate with OP-ODESGA (e.g., through a small group meeting) on the need to issue new COCs from BSP, BOC, DOH, IC, PhilPost and TESDA signed by their respective |

| | |
|--|---|
| | current heads of office. In parallel, NEDA to consult aforementioned offices on the possibility of issuing a new COC as required by DFA-OTLA. |
| V. JSI on E-Commerce | <ul style="list-style-type: none"> • TCWM to review and provide comments, if any, on the 12 clean/parked texts^[1] of the 4th Consolidated Negotiating Text (Annex B) • TCWM to provide additional comments, if any, on the New Zealand discussion paper on digital inclusion provisions on or before 24 October 2023: <ul style="list-style-type: none"> • Annex C.1 – discussion paper • Annex C.2 – Inputs received from agencies • TCWM to provide additional comments, if any, on the (1) Canada and Switzerland (extension of the moratorium) communication and on the (2) Singapore communication (permanent moratorium) on or before 24 October 2023 • Annex D – Canada and Switzerland communication • Annex E – Singapore communication • Annex D&E.1 – Inputs received from agencies • TCWM Chair to write to Geneva WTO-PM regarding the TWCM decisions on the said proposals |
| VI. JSI on Investment Facilitation for Development | <ul style="list-style-type: none"> • TCWM to review and endorse the IFD Ministerial Declaration for MC13 once the draft is available • BOI to coordinate with DOJ on the legal scrubbing of the IFD Agreement for onward endorsement of the TCWM |
| VII. Trade and Environment | <ul style="list-style-type: none"> • TCWM concurred on the establishment of the TCWM TWG on Trade and Environment and adoption of its Terms of Reference |
| VIII. Trainings and Workshops | <ul style="list-style-type: none"> • TCWM to note the updates and participate in the workshops, as necessary |
| IX. Governance | <ul style="list-style-type: none"> • Geneva WTO-PM to note the discussion to go through the TCWM approval process before co-sponsoring or supporting the proposals of the other WTO Members |



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MEMORANDUM

FOR : **The Directors**
Biodiversity Management Bureau
Ecosystems Research and Development Bureau
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Legal Affairs Service

The Administrator
National Mapping and Resource Information Authority

FROM : **The OIC Director**
Policy and Planning Service

SUBJECT : **REQUEST FOR CERTIFICATE OF CONCURRENCE FOR THE
RATIFICATION OF THE AGREEMENT ON FISHERIES
SUBSIDIES**

DATE : **18 OCT 2023**

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In this regard, we would like to request for your 1) concurrence on the **World Trade Organization – Fisheries Subsidies Agreement (WTO-FSA)**; and 2) comments (if any) on the latest single text on **the outstanding issues, including overfishing and overcapacity**. Please refer to the attached matrix of relevant documents with corresponding action requested.

Attached is the copy of the relevant documents on the said agreement or it can be accessed through this link: <https://bit.ly/3LZtRqk> for your reference. We would appreciate receiving an advance copy of your **concurrence and/ or comments** as soon as possible **or before October 23, 2023**. Should you have any inquiries, you may contact the Policy Studies Division through tel. no. 8925-1183 or 09454990762 (*Viber-activated*) and via email at psddivision@gmail.com.

For your information and appropriate action, please.


CHERYL LOISE T. LEAL
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Relevant Documents on WTO Fisheries Subsidies Agreement

| Annex | Title | Description | Action requested |
|---|---|---|----------------------------|
| A. WT/MIN(22)/33 WT/L/1144 | Agreement on Fisheries Subsidies | <p>Adopted documents during the 12th Ministerial Conference held last 12-15 June 2022.</p> <p>Including the two separate documents (W/20 and W/5) that require continued negotiations based on the outstanding issues on subsidies contributing to OCOF</p> | For review/ concurrence |
| B. RD/TN/RL/174/ | Draft Disciplines on Subsidies Contributing to Overcapacity and Overfishing (OCOF), and related Elements | <p>Latest single text document of on-going negotiations from the PM-WTO.</p> <p>The documents include addendum: Chair's explanatory note, which provides background, context and explanations for the document, incorporating the elements of W/20 and W/5.</p> <p>A working document proposed to be adopted in the 13th WTO Ministerial Conference in February 2024.</p> | For comments |
| C. BFAR Minutes of the Meeting | Highlights of the National Stakeholders' consultation/ orientation held last 5 September 2023 at the Microtel Hotel by Wyndham UP Technohub, Quezon City. | <p>Requisite to facilitate the initial process for the Philippines' domestic acceptance.</p> <p>After which, DA-BFAR will seek a Certificate of Concurrence (COCs) from relevant agencies as a pre-requisite for the FSA endorsement for domestic executive acceptance to be submitted within a week.</p> | For perusal |
| D. Template of Concurrence provided by the DA- BFAR | Certificate of Concurrence | To facilitate the DENR's concurrence for the Philippines' domestic acceptance. | For reference |

22 June 2022

(22-4789)

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**Ministerial Conference
Twelfth Session
Geneva, 12-15 June 2022**

AGREEMENT ON FISHERIES SUBSIDIES

MINISTERIAL DECISION OF 17 JUNE 2022

The Ministerial Conference;

Having regard to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Recalling the mandate given to Members at the Eleventh WTO Ministerial Conference in 2017 in Buenos Aires that the next Ministerial Conference should adopt an agreement on comprehensive and effective disciplines that prohibits certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminates subsidies that contribute to IUU-fishing recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

Decides as follows:

1. The Protocol amending the WTO Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
 2. The Protocol shall hereby be open for acceptance by Members.
 3. The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
 4. Notwithstanding Article 9.4 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.
-

ATTACHMENT

**PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING
THE WORLD TRADE ORGANIZATION**

AGREEMENT ON FISHERIES SUBSIDIES

Members of the World Trade Organization;

Having regard to the Decision of the Ministerial Conference in document WT/MIN(22)/33 – WT/L/1144 adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Hereby agree as follows:

1. Annex 1A to the WTO Agreement shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of the Agreement on Fisheries Subsidies, as set out in the Annex to this Protocol, to be placed after the Agreement on Subsidies and Countervailing Measures.
2. No reservations may be made in respect of any of the provisions of this Protocol.
3. This Protocol is hereby open for acceptance by Members.
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.¹
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this seventeenth day of June two thousand and twenty-two, in a single copy in the English, French and Spanish languages, each text being authentic.

¹ For the purposes of calculation of acceptances under Article X:3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.

ANNEX

AGREEMENT ON FISHERIES SUBSIDIES

ARTICLE 1: SCOPE

This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.^{1, 2, 3}

ARTICLE 2: DEFINITIONS

For the purpose of this Agreement:

- (a) "fish" means all species of living marine resources, whether processed or not;
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;
- (e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

¹ For greater certainty, aquaculture and inland fisheries are excluded from the scope of this Agreement.

² For greater certainty, government-to-government payments under fisheries access agreements shall not be deemed to be subsidies within the meaning of this Agreement.

³ For greater certainty, for the purposes of this Agreement, a subsidy shall be attributable to the Member conferring it, regardless of the flag or registry of any vessel involved or the nationality of the recipient.

**ARTICLE 3: SUBSIDIES CONTRIBUTING TO
ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴**

3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁵ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following^{6,7}:

- (a) a coastal Member, for activities in areas under its jurisdiction; or
- (b) a flag State Member, for activities by vessels flying its flag; or
- (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.

3.3 (a) An affirmative determination⁸ under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing.

(b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:

- (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;
- (ii) an opportunity to exchange relevant information⁹ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
- (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.

The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

⁴ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁵ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

⁶ Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

⁷ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

⁸ Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination.

⁹ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction¹⁰ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.3.

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.2 For the purpose of this Article, a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.¹¹

4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the EEZ shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

ARTICLE 5: OTHER SUBSIDIES

5.1 No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

5.2 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

5.3 A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.

¹⁰ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

¹¹ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal 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.

ARTICLE 6: SPECIFIC PROVISIONS FOR LDC MEMBERS

A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any.

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall

- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}: type or kind of fishing activity for which the subsidy is provided;
- (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared¹⁴ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) fleet capacity in the fishery for which the subsidy is provided;
 - (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (v) catch data by species or group of species in the fishery for which the subsidy is provided.¹⁵

8.2 Each Member shall notify the Committee in writing on an annual basis of a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing.

¹² For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

¹³ For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding 0.8 per cent as per the most recent published FAO data as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

¹⁴ The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

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

8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.

8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. 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.

8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member 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.

8.6 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.¹⁶ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.

8.7 Members recognize that notification of a measure does not prejudice (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.

8.8 Nothing in this Article requires the provision of confidential information.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

9.1 There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.

9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

¹⁶ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

ARTICLE 10: DISPUTE SETTLEMENT

10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.¹⁷

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement¹⁸ shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

ARTICLE 11: FINAL PROVISIONS

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster¹⁹ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

11.2 (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.

- (b) A panel established pursuant to Article 10 of this Agreement shall make no findings with respect to any claim that would require it to base its findings on any asserted territorial claims or delimitation of maritime boundaries.²⁰

11.3 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea.²¹

11.4 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

¹⁷ Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

¹⁸ For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4 or Article 5 of this Agreement.

¹⁹ For greater certainty, this provision does not apply to economic or financial crises.

²⁰ This limitation shall also apply to an arbitrator established pursuant to Article 25 of the Dispute Settlement Understanding.

²¹ Including rules and procedures of RFMO/As.

11.5 This Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.

**ARTICLE 12: TERMINATION OF AGREEMENT IF COMPREHENSIVE DISCIPLINES
ARE NOT ADOPTED**

If comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated.

10 June 2022

(22-4435)

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**Ministerial Conference
Twelfth Session
Geneva, 12-15 June 2022**

Original: English

AGREEMENT ON FISHERIES SUBSIDIES

DRAFT TEXT

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

ARTICLE 1: SCOPE

This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.^{1, 2, 3}

ARTICLE 2: DEFINITIONS

For the purpose of this Agreement:

- (a) "fish" means all species of living marine resources, whether processed or not;
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;
- (e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

¹ For greater certainty, aquaculture and inland fisheries are excluded from the scope of this Agreement.

² For greater certainty, government-to-government payments under fisheries access agreements shall not be deemed to be subsidies within the meaning of this Agreement.

³ For greater certainty, for the purposes of this Agreement, a subsidy shall be attributable to the Member conferring it, regardless of the flag or registry of any vessel involved or the nationality of the recipient.

**ARTICLE 3: SUBSIDIES CONTRIBUTING TO
ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴**

3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁵ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following^{6, 7}:

- (a) a coastal Member, for activities in areas under its jurisdiction; or
- (b) a flag State Member, for activities by vessels flying its flag; or
- (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.

3.3 (a) An affirmative determination⁸ under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing.

(b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:

- (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;
- (ii) an opportunity to exchange relevant information⁹ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
- (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.

The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

⁴ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁵ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

⁶ Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

⁷ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

⁸ Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination.

⁹ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction¹⁰ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.4.

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, for low income, resource-poor and livelihood fishing or fishing related activities, up to 12 nautical miles measured from the baselines shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.2 For the purpose of this Article, a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.¹¹

4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, for low income, resource-poor and livelihood fishing or fishing related activities, up to 12 nautical miles measured from the baselines shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

¹⁰ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

¹¹ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal 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.

ARTICLE 5: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING

5.1¹² No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing. For the purpose of this paragraph, subsidies that contribute to overcapacity or overfishing include:

- (a) subsidies to construction, acquisition, modernisation, renovation or upgrading of vessels;
- (b) subsidies to the purchase 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;
- (f) price support of fish caught;
- (g) subsidies to at-sea support;
- (h) subsidies covering operating losses of vessels or fishing or fishing related activities.

5.1.1 A subsidy is not inconsistent with Article 5.1 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.¹¹

- 5.2 (a) No Member shall grant or maintain 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).¹³
- (b) Subparagraph (a) shall not apply to the non-collection from operators or vessels of government-to-government payments under agreements and other arrangements with coastal Members for access to the surplus of the total allowable catch of the living resources in waters under their jurisdiction, provided that the requirements under Article 5.1.1 are met.

5.3 No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

5.4 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

- 5.5¹⁴ (a) A developing country Member may grant or maintain the subsidies referred to in Article 5.1 to fishing and fishing related activities within its exclusive economic zone and the area of competence of a relevant RFMO/A [for a maximum of 7 years after the entry into force of this Agreement][up to the year 2030]. Subsidies granted or maintained under this paragraph shall be exempt from actions based on Articles 5.1 and 10 of this

¹² For greater clarity, Article 5.1 does not apply to subsidies to the extent they regard stocks that are overfished.

¹³ 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, 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.

¹⁴ This provision shall not apply to Members whose annual share of the global volume of marine capture production is at or above [X] per cent as per the most recent published FAO data as circulated by the WTO Secretariat.]

Agreement for a period of 2 additional years after the end of the period referred to in the prior sentence. 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 this Agreement.

(b) (i) A developing country Member may grant or maintain the subsidies referred to in Article 5.1 to fishing and fishing related activities 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.

(ii) A Member remains exempted until its share exceeds the threshold in Article 5.5(b)(i) for three consecutive years. It shall be re-included in Article 5.5(b)(i) when its share of the global volume of marine capture production falls back below the threshold for three consecutive years.

(c) A developing country Member may grant or maintain the subsidies referred to in Article 5.1 for low income, resource-poor and livelihood fishing or fishing related activities, up to [12][24] nautical miles measured from the baselines, including archipelagic baselines.

(d) While applying Article 5.5, a Member shall endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing.

ARTICLE 6: SPECIFIC PROVISIONS FOR LDC MEMBERS

6.1 The prohibition under Article 5.1 shall not apply to LDC Members.

6.2 An LDC Member may grant or maintain the subsidies referred to in Article 5.1 to fishing and fishing related activities within its EEZ and the area of competence of a relevant RFMO/A for a maximum of [X] years after the entry into force of a decision of the UN General Assembly to exclude that Member from the "Least Developed Countries" category.

6.3 A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any. In addition, a Member applying Article 6.1 or Article 6.2 shall endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing.

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall

- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{15,16}:
 - (i) type or kind of fishing activity for which the subsidy is provided; and
 - (ii) catch data by species or group of species in the fishery for which the subsidy is provided¹⁷; and
- (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{15,16}:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared¹⁸ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (iv) fleet capacity in the fishery for which the subsidy is provided.

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

8.3 Each Member shall notify the Committee in writing on an annual basis of:

- (a) a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing;
- (b) [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]
- (c) a list of any agreements in force, or existing arrangements, for obtaining access to fisheries 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;

¹⁵ For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

¹⁶ For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding [0.8] per cent as per the most recent published FAO data as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

¹⁷ For multispecies fisheries, a Member instead may provide other relevant and available catch data.

¹⁸ The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

- (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.

8.4 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.

8.5 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. 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.

8.6 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member 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.

8.7¹⁹ (a) A Member may only invoke Article 4.3, Article 5.1.1, Article 5.5, or Article 6 in respect of subsidies which it has notified to the Committee under Article 25 of the SCM Agreement and Article 8.1 of this Agreement.

(b) In addition, a Member may only invoke Article 4.3 or Article 5.1.1 if the Member has provided the information called for in Articles 8.1(b)(i) and 8.1(b)(ii).

8.8 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.²⁰ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.

8.9 Members recognize that notification of a measure does not prejudice (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.

8.10 Nothing in this Article requires the provision of confidential information.

¹⁹ For greater certainty, and in accordance with footnote 16, Article 8.7 does not require notification prior to the regular notification of fisheries subsidies, which may include any supplement to, revision of, or correction of such notification.

²⁰ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

9.1 There is hereby established a Committee composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.

9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

ARTICLE 10: DISPUTE SETTLEMENT

10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.²¹

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement²² shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

ARTICLE 11: FINAL PROVISIONS

11.1 Members shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.

11.2 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster²³ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

²¹ Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

²² For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4 or Article 5 of this Agreement.

²³ For greater certainty, this provision does not apply to economic or financial crises.

11.3 (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.

(b) A panel established pursuant to Article 10 of this Agreement shall make no findings with respect to any claim that would require it to base its findings on any asserted territorial claims or delimitation of maritime boundaries.²⁴

11.4 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea²⁵.

11.5 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

11.6 This Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.

²⁴ This limitation shall also apply to an arbitrator established pursuant to Article 25 of the Dispute Settlement Understanding.

²⁵ Including rules and procedures of RFMO/As.



24 November 2021

(21-8880)

Page: 1/9

**Ministerial Conference
Twelfth Session
Geneva, 30 November-3 December 2021**

Original: English

AGREEMENT ON FISHERIES SUBSIDIES

DRAFT TEXT

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

ARTICLE 1: SCOPE

1.1 This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.^{1, 2}

[1.2 Notwithstanding paragraph 1 of this Article, this Agreement also applies to fuel subsidies to fishing and fishing related activities at sea that are not specific within the meaning of Article 2 of the SCM Agreement.]

ARTICLE 2: DEFINITIONS

For the purpose of this Agreement:

- (a) "fish" means all species of living marine resources, whether processed or not;
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;
- (e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

¹ For greater certainty, aquaculture and inland fisheries are excluded from the scope of this Agreement.

² For greater certainty, government-to-government payments under fisheries access agreements shall not be deemed to be subsidies within the meaning of this Agreement.

**ARTICLE 3: SUBSIDIES CONTRIBUTING TO
ILLEGAL, UNREPORTED AND UNREGULATED FISHING³**

3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁴ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following^{5, 6}:

- (a) a coastal Member, for activities in areas under its jurisdiction; or
- (b) a flag State Member, for activities by vessels flying its flag; or
- (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.

3.3 (a) An affirmative determination⁷ under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing.

(b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:

- (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;
- (ii) an opportunity to exchange relevant information⁸ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
- (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.

The coastal Member shall notify an affirmative determination to the Committee.

³ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁴ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

⁵ Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

⁶ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

⁷ Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination.

⁸ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction⁹ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.3.

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

[3.8 For a period of [2] years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, for low income, resource-poor and livelihood fishing or fishing related activities, up to [12] nautical miles measured from the baselines shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.]

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.2 For the purpose of this Article, a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.¹⁰

[4.4 For a period of [2] years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, for low income, resource-poor and livelihood fishing or fishing related activities, up to [12] nautical miles measured from the baselines shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.]

⁹ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

¹⁰ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal 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.

ARTICLE 5: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING

5.1 No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing. For the purpose of this paragraph, subsidies that contribute to overcapacity or overfishing include:

- (a) subsidies to construction, acquisition, modernisation, renovation or upgrading of vessels;
- (b) subsidies to the purchase 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;
- (f) price support of fish caught;
- (g) subsidies to at-sea support;
- (h) subsidies covering operating losses of vessels or fishing or fishing related activities; and
- (i) 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).¹¹

5.1.1 A subsidy is not inconsistent with Article 5.1 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.¹⁰

5.2 No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

5.3

[**ALT 1** No Member shall grant or maintain subsidies for a vessel not flying the flag of the subsidizing Member.]

[**ALT 2** No Member shall grant or maintain subsidies under Article 5.1 for a vessel over which it cannot exercise jurisdiction or control or cannot otherwise ensure that the vessel to which the subsidy is granted is not engaging in activities which contribute to overfishing or overcapacity.]

¹¹ 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 shall not for that reason alone be considered to be contingent upon, or tied to, such fishing or fishing related activities.

- [5.4^[12] (a) A developing country Member may grant or maintain the subsidies referred to in Article 5.1 to fishing and fishing related activities within its EEZ and the area of competence of a relevant RFMO/A for a maximum of [X] years after the entry into force of this Agreement. A developing country Member intending to invoke this provision shall inform the Committee in writing before the date of entry into force of this Agreement.
- (b) In addition, a developing country Member may grant or maintain the subsidies referred to in Article 5.1 to fishing and fishing related activities:
- (i) if its annual share of the global volume of marine capture production does not exceed [0.7 per cent] as per the most recent published FAO data¹³;
 - (ii) for low income, resource-poor and livelihood fishing or fishing related activities, up to [12] nautical miles measured from the baselines.
- (c) While applying Article 5.4, a Member shall endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing.]

ARTICLE 6: SPECIFIC PROVISIONS FOR LDC MEMBERS

6.1 The prohibition under Article 5.1 shall not apply to LDC Members.

[6.2 An LDC Member may grant or maintain the subsidies referred to in Article 5.1 to fishing and fishing related activities within its EEZ and the area of competence of a relevant RFMO/A for a maximum of [X] years after the entry into force of a decision of the UN General Assembly to exclude that Member from the "Least Developed Countries" category.

6.3 A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any. In addition, a Member applying Article 6.1 or Article 6.2 shall endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing.]

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

[Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.]

^[12] This provision shall not apply to Members whose annual share of the global volume of marine capture production is at or above 10 per cent as per the most recent published FAO data.]

¹³ A Member remains exempted until its share exceeds the threshold for three consecutive years. It shall be re-included in 5.4(b)(i) when its share of the global volume of marine capture production falls back below the threshold for three consecutive years.

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall

- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement¹⁴,^[15]:
 - (i) type or kind of fishing activity for which the subsidy is provided; and
 - (ii) catch data by species or group of species in the fishery for which the subsidy is provided¹⁶; and
- (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement¹⁴,^[15]:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared¹⁷ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (iv) fleet capacity in the fishery for which the subsidy is provided.

[8.1**bis** Fuel subsidies, that are not specific within the meaning of Article 2 of the SCM Agreement, granted or maintained by a Member to fishing and fishing related activities at sea and/or availed by such a Member's fishing vessels;¹⁸]

8.2 Each Member shall notify the Committee in writing on an annual basis of:

- (a) a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing;
- (b) [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]
- (c) a list of any agreements in force, or existing arrangements, for obtaining access to fisheries 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;

¹⁴ For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

¹⁵ [For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding [0.7 per cent] as per the most recent published FAO data, the notification of the additional information in this subparagraph may be made every four years.]

¹⁶ For multispecies fisheries, a Member instead may provide other relevant and available catch data.

¹⁷ The term "shared stocks" refers to stocks that occur within the exclusive economic zones (EEZ) of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

¹⁸ [Notwithstanding paragraph 2 of Article 25 of the SCM Agreement.]

(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.

8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.

8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. 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.

8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member 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.

8.6 (a) A Member may only invoke Article 4.3, Article 5.1.1, Article 5.4, or Article 6 in respect of subsidies which it has notified to the Committee under Article 25 of the SCM Agreement and Article 8.1 of this Agreement.

(b) In addition, a Member may only invoke Article 4.3 or Article 5.1.1 if the Member has provided the information called for in Articles 8.1(b)(i) and 8.1(b)(ii).

8.7 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.¹⁹ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.

8.8 Nothing in this Article requires the provision of confidential information.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

9.1 There is hereby established a Committee composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.

¹⁹ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

ARTICLE 10: DISPUTE SETTLEMENT

10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.²⁰

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement²¹ shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

ARTICLE 11: FINAL PROVISIONS

11.1 Members shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.

11.2 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster²² relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

[11.3 (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.

- (b) A panel established pursuant to Article 10 of this Agreement shall not entertain any claim that would require it to address any issues of territorial claims or delimitation of maritime boundaries that is contested by a party or a third party.]

11.4 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea²³.

²⁰ Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

²¹ For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4 or Article 5 of this Agreement.

²² For greater certainty, this provision does not apply to economic or financial crises.

²³ Including rules and procedures of RFMO/As.

11.5 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

11.6 This Agreement does not modify or nullify the rights and obligations as provided by the SCM Agreement.

To: SFA
Fr: Geneva WTO
Dt: 05 September 2023
Re: **Draft Disciplines on Fisheries Subsidies 'Second Wave' of Negotiations**
Rt: OUMAIER, UNIO, MOAO, OTLA
Cc: Secretary of the Department of Agriculture
Secretary of the Department of Trade and Industry
Director General of the National Economic Development Authority
Undersecretary of DTI and Chair of the Technical Committee on WTO Matters
Cn: ZWTO-274-2023
Pgs: 17 (including this page)

Unless otherwise attached to this report, any documents cited herein are available for downloading from the WTO website.

Mission wishes to convey the circulation of the Draft Disciplines on Subsidies Contributing to Overcapacity and Overfishing (OCOF), and Related Elements (RD/TN/RL/174), which has been issued by the NGR Chair under his own responsibility with the aim of starting text-based negotiations. The NGR Chair has emphasized that the draft does not reflect agreed text and is without prejudice to any Member's position. Attached also is an Addendum (RD/TN/RL/174/Add.1) containing the Chair's explanatory note, which provides background, context, and explanations for the document. These documents are attached as *Annex A* and *B*, respectively. The Chair intends to begin text-based negotiations during the **18-22 September 2023** Fish Week cluster of meetings. The convening email communication for the said Fish Week is attached as *Annex C*, where the Chair provides the details on how the Fish Week will be organized.

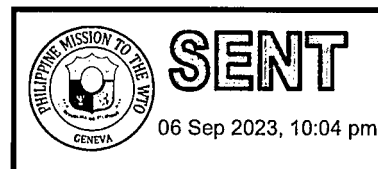
Under Article A of the draft, the core disciplines are outlined, employing a "hybrid approach" that combines a prohibition on such subsidies with a list of presumptively prohibited subsidies, qualified by sustainability elements. Article A.1.1 and A.1.2 introduce a two-tiered sustainability-based qualification to the prohibition, with stricter rules for the largest subsidizers. Article A.1.3 elaborates on the Committee review process, allowing Members to seek clarifications about notifications. Article A.2 contains a prohibition on subsidies contingent on fishing outside the subsidizing Member's jurisdiction.

Article B.1 focuses on special and differential treatment (SDT) for developing country Members. It provides transition periods and a peace clause, allowing some flexibility in implementing the core disciplines. Article B.2 addresses exemptions for developing country Members regarding subsidies for low income, resource-poor and livelihood fishing, while Article B.3 provides exemptions for Members with a de minimis share of global marine capture production.

Article C outlines notification and transparency provisions, including obligations for Members to comply with existing agreements on notifications and provisions related to forced labor, fisheries access agreements, and non-specific fuel subsidies. Article D serves as a placeholder¹ for addressing other issues not covered in earlier sections, such as non-specific fuel subsidies.

Mission Comments and Recommendations.

¹ Still to be discussed and negotiated among Members.



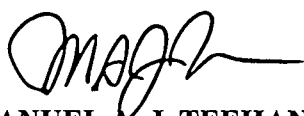
Mission welcomes and appreciates the circulation of the draft text, which is consistent with the mandate focusing on subsidies that contribute to OCOF and SDT for developing and least developed countries. This is viewed as a response to the Director General's directive to the Chairperson in coming up with a document that will be presented and discussed during the WTO Senior Officials' Meeting (SOM) on 23-24 October 2023.

It appears now that the Chair is convinced that the hybrid approach² seems to be the right track in addressing subsidies contributing to OCOF, which received strong traction from Members during the recent Fish Week discussions. The draft also provides stricter rules for large subsidizers, which has been demanded by the Philippines and other Members, whether developed or developing countries. On S&DT, exemption from prohibition in providing subsidies to low income, resource-poor and livelihood fishing for developing countries, such as the Philippines, is also included in the draft text.

The Philippines primary objective in this negotiation, as conveyed by the Department of Agriculture-Bureau of Fisheries and Aquatic Resources (DA-BFAR), is to seek a balance between the disciplines of OCOF in tandem with effective S&DT for developing and least-developed countries. In this regard, Mission would like to request that DA-BFAR assess the draft text and whether the proposed disciplines achieve this equilibrium and address our core concerns.

Mission recommends the in-person participation of DA-BFAR capital experts in the upcoming 18-22 September 2023 Fish Week. Given the strong expectation to start text-based negotiations, DA-BFAR's presence in Geneva for the next Fish Week is necessary to provide guidance and inputs in this crucial part of the fisheries subsidies negotiations. Should it be feasible, Mission would recommend that a virtual TCWM Small Group meeting be organized within the week of 12-15 September 2023 to discuss views and inputs on the draft text that will help in crafting appropriate positions and interventions for Fish Week.

For the Department's and TCWM's information and appropriate action.



MANUEL A. J. TEEHANKEE
Ambassador and Permanent Representative

² A combination of a statement of the prohibition and a list of presumptively prohibited fisheries subsidies.



Negotiating Group on Rules

UNOFFICIAL ROOM DOCUMENT*

NEGOTIATING GROUP ON RULES – FISHERIES SUBSIDIES

DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING,
AND RELATED ELEMENTS

Groupe de négociation sur les règles

DOCUMENT DE SÉANCE NON OFFICIEL*

NEGOTIATING GROUP ON RULES – FISHERIES SUBSIDIES

DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING,
AND RELATED ELEMENTS

Grupo de Negociación sobre las Normas

DOCUMENTO DE SALA NO OFICIAL*

NEGOTIATING GROUP ON RULES – FISHERIES SUBSIDIES

DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING,
AND RELATED ELEMENTS

* Documents issued in the RD series are not official WTO documents. They usually appear in their language of submission and will not be translated systematically into the working languages of the WTO. They are intended for use in WTO meeting rooms and are attributed an unofficial symbol for archiving purposes only.

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**DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND
OVERFISHING, AND RELATED ELEMENTS**

Note: As Chair of the Negotiating Group on Rules (NGR), I had indicated the need to form a basis for the NGR's text-based discussions in the fall with respect to disciplines on subsidies contributing to overcapacity and overfishing, and related elements. This document is intended to be used as the starting point for the text-based phase, on which Members can build on and adjust. As such, this document is without prejudice to any Member's positions or views, whether or not reflected herein. Document RD/TN/RL/174/Add.1 provides detailed explanations of the provisions in this draft text.

ARTICLE A: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING

A.1^a No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing. For the purpose of this paragraph, subsidies that contribute to overcapacity or overfishing include:

- (a) subsidies to construction, acquisition, modernisation, renovation or upgrading of vessels;
- (b) subsidies to the purchase 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;
- (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 subsidy is not inconsistent with Article A.1 if a subsidizing Member not falling under Article A.1.2 demonstrates in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.^b In addition to what is required under Article C.1, a subsidizing Member invoking this provision must provide the following:

- (i) catch data by species or group of species in the fishery for which the subsidy is provided^c;
- (ii) status of the fish stocks in the fishery for which the subsidy is provided (e.g., overfished, maximally sustainably fished, or underfished) and the

^a For greater clarity, Article A.1 does not apply to subsidies to the extent they regard stocks that are overfished.

^b For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal 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.

^c For multispecies fisheries, a Member instead may provide other relevant and available catch data.

reference points used, and whether such stocks are shared^d with any other Member or are managed by an RFMO/A; and

(iii) conservation and management measures in place for the relevant fish stock.

A.1.2 (a) The [X] largest providers of fisheries subsidies by annual aggregate value according to [...] shall be deemed to be providing subsidies to fishing or fishing related activities that contribute to overcapacity and overfishing.

(b) Notwithstanding subparagraph (a), a Member falling under that subparagraph shall not be deemed to be providing subsidies that contribute to overcapacity or overfishing if the Member demonstrates through a notification immediately after a subsidy is designed and in effect, and thereafter in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies, that measures are implemented to maintain stocks in the relevant fishery or fisheries at a biologically sustainable level.^b In addition to what is required under Article C.1, a subsidizing Member invoking this provision must provide the following:

- (i) catch data by species or group of species in the fishery for which the subsidy is provided^c;
- (ii) status of the fish stocks in the fishery for which the subsidy is provided (e.g., overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared^d with any other Member or are managed by an RFMO/A;
- (iii) conservation and management measures in place for the relevant fish stock; and
- (iv) fleet capacity in the fishery for which the subsidy is provided.

A.1.3 Any Member may, at any time, seek clarification on the fisheries subsidies granted or maintained by another Member. Where a Member has brought such a matter to the attention of the subsidizing Member or the Committee on Fisheries Subsidies referred to in Article 9 of the Agreement on Fisheries Subsidies, the subsidizing Member shall respond to the request as quickly as possible in writing and in a comprehensive manner.

A.2 (a) No Member shall grant or maintain 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).^e

(b) [PLACEHOLDER: POSSIBLE FLEXIBILITY FOR SUBPARAGRAPH (a)]

ARTICLE B: SPECIAL AND DIFFERENTIAL TREATMENT

B.1 (a) A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its exclusive economic zone and in the area and for species under the competence of a relevant RFMO/A for a maximum of [7] years after the entry into force of these disciplines. A developing country Member intending to invoke this provision shall inform the Committee on Fisheries Subsidies in writing within one year of the date of entry into force of these disciplines.

^d The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

^e 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, 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.

- (b) Subsidies granted or maintained under subparagraph (a) shall be exempt from actions based on Article A.1 and Article 10 of the Agreement on Fisheries Subsidies for a period of two additional years after the end of the period referred to in subparagraph (a).
- (c) A developing country Member may seek an extension of the period referred to in subparagraph (b) through the Committee on Fisheries Subsidies, which shall take into account the specific circumstances of that Member. Sympathetic consideration shall be given to developing country Members that demonstrate concrete progress toward implementing Article A.1.

B.2 A developing country Member may grant or maintain the subsidies referred to in Article A.1 for low income, resource-poor and livelihood fishing or fishing related activities, up to [12][24] nautical miles measured from the baselines, including archipelagic baselines.

B.3 A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities 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.3 when its share of the global volume of marine capture production falls back below the threshold for three consecutive years.

B3 **ALT** A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities if its subsidies to fishing and fishing related activities do not exceed the annual aggregate value of [USD X] as per [...].

B.4 The prohibition under Article A.1 shall not apply to LDC Members. An LDC Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its EEZ and in the area and for species under the competence of a relevant RFMO/A for a maximum of [X] years after the entry into force of a decision of the UN General Assembly to exclude that Member from the "Least Developed Countries" category.

B.5 While applying Article B, a Member shall endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing.

B.6 [PLACEHOLDER: POSSIBLE CRITERION-BASED EXCLUSION FROM SDT]

ARTICLE C: NOTIFICATION AND TRANSPARENCY

C.1 The provisions of Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies shall apply to these disciplines, with the additions provided for in Articles A, B and C.

C.2 Each Member shall notify the Committee on Fisheries Subsidies 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 fisheries 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.

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

ARTICLE D: OTHER OVERCAPACITY AND OVERFISHING PROVISIONS

D.1 [PLACEHOLDER: POSSIBLE SUBSTANTIVE PROVISION ON NON-SPECIFIC FUEL SUBSIDIES]

D.2 [PLACEHOLDER FOR OTHER POSSIBLE PROVISIONS]



Negotiating Group on Rules

UNOFFICIAL ROOM DOCUMENT*

NEGOTIATING GROUP ON RULES – FISHERIES SUBSIDIES

DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING,
AND RELATED ELEMENTS

Addendum

Chair's explanatory note accompanying RD/TN/RL/174

Groupe de négociation sur les règles

DOCUMENT DE SÉANCE NON OFFICIEL*

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DOCUMENTO DE SALA NO OFICIAL*

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**DRAFT DISCIPLINES ON SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND
OVERFISHING, AND RELATED ELEMENTS**

Addendum

Chair's explanatory note accompanying RD/TN/RL/174

INTRODUCTION

This addendum provides background, context, and explanations for the document "*Draft disciplines on subsidies contributing to overcapacity and overfishing, and related elements*", which I have circulated today in document RD/TN/RL/174. As indicated in its cover note, I suggest we use that document as the starting point for our text-based work this fall.

1. BACKGROUND AND CONTEXT

Members are aware that WTO Ministers, through their Decision in document WT/MIN(22)/33 adopting the Agreement on Fisheries Subsidies at the WTO 12th Ministerial Conference (MC12), mandated the Negotiating Group on Rules (NGR) to continue its work. In particular, Ministers instructed the NGR to negotiate on the issues in documents WT/MIN(22)/W/20 (W20) and WT/MIN(21)/W/5 (W5) that were left outstanding after MC12, with a view to making recommendations to the Thirteenth WTO Ministerial Conference (MC13) for additional provisions that would achieve a comprehensive agreement on fisheries subsidies. Members subsequently made clear in a variety of fora, starting with the retreat for Heads of Delegation held in Evian in October 2022, that the main focus of this "second wave" of negotiations should be to develop disciplines on subsidies contributing to overcapacity and overfishing.

Since taking up the Chair of the NGR in January this year, bearing in mind the MC12 mandate, I have been structuring the Group's work with a view to establishing as soon as possible an initial textual basis that we could use as the starting point for building a consensus text for adoption by Ministers next February at MC13. In this connection, I have consistently expressed the view that to be in a position to meet this deadline, we need to begin text-based negotiations as soon as we resume work after the summer break. During the last two Fish Weeks before the break, the Negotiating Group focused on discussing proposals of elements for that text-based work submitted by various Members and groups. My communication of 31 July foreshadowed the circulation of a starting point document before our resumption of work in the fall.

To aid all of our reflections on elements for such a starting point document, my 31 July communication to Members included an annex containing a so-called "menu of options". This annex was aimed at encouraging Members to explore commonalities and possible overlaps among the elements in the documents before us. To this end it groups together similar concepts from the different proposals that have been received and from other relevant documents, particularly W20 and W5. I hope that the annex is useful to your own reflections about all of those documents, as well as to your consideration of the starting point document I have circulated today.

In putting the starting point document together, I have reflected on the various elements and approaches before us which, based on the Negotiating Group's discussions, appear to enjoy substantial support. As indicated in my 31 July communication, my intention has not been to try to squeeze every proposal in its entirety into the document, but rather to establish a structured foundation for Members to adjust through your further inputs as we progress in the negotiating process. Thus, every textual element in the document should be very familiar to all of you, even if the drafting does not always simply replicate language contained in original proposals or other documents. You will note that in a few places the document either provides an alternative textual option or contains a simple placeholder in lieu of specific language.

I have circulated the document in the RD/TN/RL (room document) series. Using this series reflects my intended purpose of the document as a basic starting point for our text-based discussions, and not in any way as a suggested final outcome.

I would emphasize here (which in any event goes without saying) that nothing in the document is agreed. Furthermore, it is absolutely clear that the document is without prejudice to any Member's position on any issue, regardless of whether or how the document may reflect that issue. The document is meant only to serve as a starting point for a more focused phase of our work, and it is my hope that Members will amend it to progressively build consensus through that work.

The remainder of this addendum is intended to assist Members to understand the specific content of the document in RD/TN/RL/174. It thus provides explanations of each provision of the document, including in relation to corresponding provisions in W20 and W5, i.e., the immediately preceding versions of the draft disciplines on the outstanding issues.

2. DETAILED EXPLANATION OF THE PROVISIONS OF RD/TN/RL/174

ARTICLE A: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING

Article A.1, Article A.1.1, Article A.1.2, and Article A.1.3

Article A.1 contains draft language for the core disciplines on subsidies contributing to overcapacity and overfishing. The drafting is based on a "hybrid approach" combining a statement of the prohibition and a list of presumptively prohibited fisheries subsidies, along with a qualification to the prohibition based on sustainability elements. The basic structure of the discipline is thus the same as in the hybrid approach in the corresponding provisions of W20 and W5. As was explained in the addendum to W20 (WT/MIN(22)/W/20/Add.1), the aim and operation of the hybrid approach is to ensure that sustainability measures factor in as one important consideration in the granting and maintaining of subsidies, and that decisions on subsidization likewise should factor into sustainability considerations. The subsidies and sustainability measures would be the subject of a demonstration that sustainability measures were in place for the fish stocks in respect of which the subsidies were provided. This demonstration process would begin with notifications to the Committee on Fisheries Subsidies.

Based on our second wave discussions so far, this type of hybrid approach for the core discipline on subsidies contributing to overcapacity and overfishing appears to have the broadest support among the different proposals. That said, the provisions in Article A.1 and its subparagraphs contain various modifications to the approach in W20 and W5. These modifications, which draw on proposals and suggestions from Members, are aimed at addressing a broad-based call to tighten the core discipline relative to that previous drafting, particularly in respect of the largest subsidizers.

Similar to the approach in Article 5.1 of W20 and W5, the disciplines in Article A.1 combine a prohibition in the chapeau and an illustrative list of certain presumptively prohibited subsidies, with sustainability-based qualifications to the prohibition in Articles A.1.1 and A.1.2. These provisions would be operationalized, in part, through Article A.1.3 which elaborates certain aspects of the Committee review process.

In more detail, the main body of Article A.1, including sub-items (a) through (h), is identical to the counterpart provision in W20. This provision consists of a chapeau containing the statement of the prohibition on subsidies that contribute to overcapacity and overfishing, and an illustrative list of certain specific types of such subsidies. In our discussions to date, most Members continue to support the approach of stating the prohibition and then having an illustrative list of types of subsidies presumed to contribute to overcapacity and overfishing. While some Members have suggested amending in different ways the indicative list that appeared in W20, or splitting it into a closed list of most harmful subsidies and an indicative list of other subsidies that contribute to overcapacity and overfishing, these ideas have not yet been explored in detail and so are not included in the starting point document. Furthermore, some proposals call for a list-based approach as opposed to a hybrid approach. It will be for Members, in the forthcoming text-based discussions, to determine whether to maintain the overall approach reflected in Article A.1, and how to adjust the drafting.

Article A.1 is qualified by, and thus needs to be read together with, Articles A.1.1 and A.1.2. Between them, these latter provisions would establish a two-tiered sustainability-based qualification to the prohibition in Article A.1.

Article A.1.1, which creates the first tier of this mechanism, is of general application. This Article provides that a subsidy is not inconsistent with Article A.1 if the subsidizing Member demonstrates that measures are implemented to maintain the relevant fish stocks at a biologically sustainable level. This language is similar to that in the counterpart provision of Article 5.1.1 of W20 and W5. Article A.1.1 is further elaborated, however, by providing that the demonstration is to be made through the Member's regular subsidy notification under the Agreement on Subsidies and Countervailing Measures as well as Article 8 of the Agreement on Fisheries Subsidies, and by listing certain information that would have to be provided: catch data for the fish stock in question, status of the stock, and conservation and management measures in place for it.

The second tier of the mechanism for using the sustainability-based qualification to Article A.1 is found in Article A.1.2. This provision has been introduced on the basis of a widespread call, and several proposals, to apply to the largest subsidizers a stricter sustainability test than that in W20 and W5. In particular, Article A.1.2 aims to address the concern voiced by numerous Members that Article 5.1.1 in W20 and W5 would not have changed the status quo in terms of the total amount of fisheries subsidies being provided. Article A.1.2 is entirely new, with no counterpart in W20 or W5. However, the ideas and drafting draw from various Member proposals.

Under Article A.1.2 the largest providers of fisheries subsidies, identified on the basis of the annual aggregate value of their fisheries subsidies, would be deemed to provide subsidies that contribute to overcapacity and overfishing. The consequence of this deeming is that these Members would bear the burden of demonstrating, through a notification to be submitted immediately after a subsidy is designed and in effect, that measures are implemented to maintain at a biologically sustainable level the stocks in the relevant fishery or fisheries. Adding to the strictness of Article A.1.2, the content of the immediate "demonstration" notification that it provides for is more extensive than the periodic notification provided for in Article A.1.1. In addition, the notification under Article A.1.2 would need to contain all of the information referred to in Article A.1.1 plus information on the fleet capacity in the fishery for which the subsidy is provided.

An issue that arises in connection with Article A.1.2 is the methodology that would be used to identify the largest subsidizers. While as presented in the starting point document this would be done based on the annual aggregate value of each Member's subsidization, certain Members have proposed alternative approaches such as each Member's annual aggregate amount of fisheries subsidies calculated as a percentage of the total value of its marine catch.

A related key practical issue that Members would need to resolve to make Article A.1.2 operational, regardless of the specific methodology for identifying the top subsidizers, is to identify and agree on the source of information to use in that methodology. The draft reflects this through the bracketed phrase "according to [...]".

A further issue that would need to be negotiated is the specific number of top subsidizers to which Article A.1.2 would apply. This is reflected by the reference to "the [X] largest providers of fisheries subsidies".

The Committee's review of the notifications referred to in Articles A.1.1 and A.1.2 would form part of the "demonstration" process by allowing other Members to pose questions and seek clarifications about the notifications. Article A.1.3, does not have a counterpart in Article 5 of W20 or W5, but draws from recent proposals. It reinforces this Committee review process by explicitly providing for concerned Members to seek relevant information from subsidizing Members and establishing rules for the subsidizing Members' responses.

Article A.1 retains certain other elements contained in footnotes to the Agreement on Fisheries Subsidies and reflected in W20. First is footnote 'a' to Article A.1 of the starting point document, which replicates footnote 12 of W20. This footnote clarifies that this article (the core disciplines on subsidies contributing to overcapacity) does not apply to subsidies to the extent they regard stocks that are overfished. It is aimed at addressing a concern raised by some Members that a subsidy for fishing a stock that was recognized as being overfished could be permitted under Article 4.3 of the Agreement on Fisheries Subsidies but, because in such circumstances it would be impossible to demonstrate that measures are in place to maintain an overfished stock at a biologically sustainable level, the same subsidy could be prohibited under Article A.1. Second is footnote "b", which is identical to footnote 11 of the Agreement on Fisheries Subsidies, and which defines "biologically sustainable level". Third is footnote "c", which is identical to footnote 15 of the Agreement on

Fisheries Subsidies, concerning catch data for multispecies fisheries. Fourth is footnote "d", which is identical to footnote 14 of the Agreement on Fisheries Subsidies, which defines shared stocks.

Article A.2

Article A.2 contains a prohibition on subsidies contingent on fishing outside the subsidizing Member's jurisdiction. This provision is a standalone discipline, as was the case for the counterpart provision of W20.

Article A.2(a) contains the statement of the prohibition. The language of this provision, including footnote "e" attached thereto, is identical to that of the corresponding provision in W20.

Article A.2(b) takes the form of a bracketed placeholder for possible flexibility in respect of the prohibition in Article A.2(a). The use of a placeholder here reflects the fact that Members hold different views as to whether and what kind of flexibility from such a prohibition might be appropriate, and how any such flexibility should operate. Some Members consider that flexibility from the prohibition in A.2(a) should be provided for non-collection from operators or vessels of government-to-government access fees, subject to sustainability requirements (as was the case in W20). Other Members consider that such a prohibition should not be free-standing, but instead should be treated the same as any other subsidies listed in Article A.1, including (as was the case in W5) being eligible for the sustainability-based qualifications to the prohibition. Some Members consider that there should be no flexibility in respect of this prohibition.

ARTICLE B: SPECIAL AND DIFFERENTIAL TREATMENT

Article B contains provisions on special and differential treatment (SDT) for developing country Members in relation to the draft disciplines on subsidies concerning overcapacity and overfishing. These SDT provisions include certain elements from the corresponding provisions in W20 and W5, as well as additional elements on SDT reflected in some of the recent proposals from Members.

Article B.1

Article B.1 provides three types of SDT that would be available to developing country Members. The provisions of Articles B.1(a) and B.1(b), taken together, are similar to Article 5.5(a) in W20. Article B.1(a) provides for a transition period for a maximum number of [7] years available to all developing country Members. During the transition period, certain subsidies maintained by such Members to fishing and fishing related activities in their EEZ or in the area and for species under the competence of a relevant RFMO/A would be exempt from the prohibition in Article A.1 (and thus not subject to the sustainability qualifications in Article A.1.1 and Article A.1.2). The brackets around the duration of the transition period reflects that Members' views on this point have not yet been fully developed and explored. The applicability of this transition period would be conditioned on whether the Member intending to invoke this provision informs the Committee of such intention in writing within one year of the entry into force of the new disciplines. This condition also appeared in Article 5.5(a) of W20.

Article B.1(b) creates a further period of flexibility through a two-year peace clause that would be available after the transition period to all developing Members that had notified their intention to avail themselves of the transition period pursuant to Article B.1(a). During the period of the peace clause, a developing country Member would be obliged to implement Article A.1 but would be exempt from dispute settlement in respect of obligations under that provision. As noted, the drafting of this peace clause is similar to language in Article 5.5(a) of W20.

Unlike Articles B.1(a) and B.1(b), Article B.1(c) has no counterpart in W20 but draws from recent proposals. This provision would establish a mechanism by which a developing country Member would be able to request the Committee to grant an extension of the peace clause. In considering such a request, the Committee would take into account the specific circumstances of the Member in question, and would give sympathetic consideration to developing country Members that demonstrate concrete progress toward implementing Article A.1. Subparagraph (c) is included to address proposals suggesting that transition periods should be linked to helping developing country Members transition to sustainable fishing.

Article B.2

Article B.2 addresses the call from numerous Members to exempt from the disciplines developing country Members' subsidies to artisanal and small-scale fishing.

This provision is identical to the counterpart provision in W20, containing language describing the fishing in question as "low income, resource poor and livelihood fishing", and including the same bracketed options (12 or 24 nautical miles from the baselines) for the precise geographical limit within which this exemption would apply.

It has been evident in recent discussions that Members' views remain divergent on how best to define and provide SDT for artisanal and small-scale fishing. Proposals seeking to provide some guidance in terms of characteristics of such fishing could be further explored.

Article B.3

Article B.3, which is identical in substance to the counterpart provision of W20, would exempt from the disciplines in Article A.1 developing country Members with no more than a specified (*de minimis*) share of the annual global volume of marine capture production. This provision retains the bracketed figure in W20 of no more than 0.8% of annual global marine capture production as the *de minimis* threshold.

Article B.3 ALT is a new, alternative *de minimis* formulation. This formulation addresses proposals to exclude from the disciplines in Article A.1 developing country Members whose absolute level of subsidies provided to fishing or fishing related activities is below a specified amount. The proponents of this type of approach have signalled openness to discussing the precise amount of such a *de minimis* subsidization threshold. To reflect this, the text contains a placeholder for this subsidization amount. A central practical issue that Members would need to resolve under this formulation, as is the case for Article A.1.2, would be to identify and agree on the source of information to use in calculating each relevant Member's absolute amount of the subsidization. This is indicated in the phrase "as per [...]" in this provision.

Article B.4

Article B.4 provides for special and differential treatment specifically for LDC Members. This provision is essentially the same as the counterpart provisions in W20 and W5, although the format differs slightly.

Article B.5

Article B.5 is identical to the counterpart provision in W20. It reflects a widely-held view that Members availing themselves of SDT provisions should nevertheless aim to provide subsidies in a sustainable manner, with a view to avoiding contributing to overcapacity and overfishing.

Article B.6

Article B.6 is a placeholder for a provision that would exclude certain developing country Members from the scope of special and differential treatment. Three options have been proposed as a basis for identifying such Members, should such a provision be included: (a) a Member's share of global marine capture production; (b) the geographic area in which a Member conducts fishing activities; and (c) a voluntary opt-out by developing country Members not intending to avail themselves of SDT. Views also diverge regarding whether such a provision should be included in the disciplines at all.

Furthermore, Members would need to consider the relationship between developing country Members falling under Article A.1.2 and the various SDT provisions.

Given the multiplicity of views on this issue, further discussion will be required. The placeholder in Article B.6 is intended to invite such discussion.

ARTICLE C: NOTIFICATION AND TRANSPARENCY

Article C sets forth notification and transparency provisions.

Article C.1 clarifies that in addition to the specific notification obligations set out in these disciplines, Members are required to comply with their notification obligations under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies, as consistent with the approach in W20 and W5.

Article C.2(a) pertains to information indicating the use of forced labour by vessels or operators. This provision is identical to its counterpart in W20 and W5.

Article C.2(b) pertains to information about government-to-government fisheries access agreements or arrangements. This provision is identical to its counterpart in W20.

Article C.3 covers information about non-specific fuel subsidies. This provision is identical to its counterpart in W20 and W5.

ARTICLE D: OTHER OVERCAPACITY AND OVERFISHING PROVISIONS

Article D provides space for insertion of other issues concerning subsidies contributing to overcapacity and overfishing that are not addressed elsewhere.

The one issue referred to in the placeholder in Article D.1 is non-specific fuel subsidies. This issue was extensively debated and was dealt with differently in W5 and W20.

Article D.2 provides space for other possible provisions Members may wish to include. For instance, in the second wave of negotiations, some Members have also proposed specific disclaimer language regarding their rights under UNCLOS. Reference to UNCLOS remains a sensitive issue for certain Members, however, and so this issue is not referred to in Article D. In this connection, Members are invited to consider the disclaimer language in Article 11.3 of the Agreement on Fisheries Subsidies, the scope of which appears to be relatively broad.



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| To: Heads of Delegation All TNC Participants | |
| From: H.E. Ambassador Einar Gunnarsson Chair, Negotiating Group on Rules | Date: 4 September 2023 |

NEGOTIATING GROUP ON RULES – FISHERIES SUBSIDIES

ORGANIZATION OF THE TIME DURING THE WEEK OF 18 SEPTEMBER 2023

Dear colleagues,

I hope you had a restful summer. As I announced earlier, the fifth "fish week" cluster of meetings of the Negotiating Group on Rules (NGR) for this year will be held during the week of 18 September 2023.

Issues for consideration

In my report to the NGR on 14 July, I recalled that our collective vision of completing work by the Trade Negotiations Committee meeting in December meant that our real negotiating window this fall is just two-and-a-half months. Taking this into account, I indicated that before our September fish week, I would provide a starting point document for our text-based discussions. To this end, on 4 September I circulated a draft text in document RD/TN/RL/174, along with an explanatory addendum in RD/TN/RL/174/Add.1 providing details of the provisions in the draft text.

In putting the draft text together, I have reflected on the various elements and approaches before us which, based on the Negotiating Group's discussions, appear to enjoy substantial support. As indicated in my 31 July communication, my intention has not been to try to squeeze every proposal in its entirety into the document, but rather to establish a structured foundation for Members to adjust through your further inputs as we progress in the negotiating process.

With this in mind, I suggest that our discussions in the September fish week should focus on your initial reactions to the draft text.

Organization of work

I suggest that we structure our work during the week in a similar manner to what we have done in the four previous fish weeks, as follows (Annex I presents a table summarizing this information):

- Monday morning (18 September), starting at 10:00 AM, Room W has been reserved for an open-ended meeting at the level of HoD+1, where I intend to introduce the draft text and outline the details of our work for the week. I also will give the United Kingdom the opportunity to briefly present its proposal in RD/TN/RL/173. I do not intend to open the floor so I expect this to be a short meeting.
- Tuesday morning and afternoon (19 September), and Wednesday morning and afternoon (20 September), I intend to organize four in-person small group meetings using the same format as in the previous clusters. That is, each meeting will have the same agenda, all interested delegations will have the opportunity to participate and intervene in one of these sessions, and all other delegations will be able to follow all of these sessions online in listening mode.

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- The small group sessions will be an opportunity for delegations to provide your initial reactions to the draft text. I would particularly like to hear your views on the two-tier sustainability-based flexibility in Articles A.1.1 and A.1.2 and the special and differential treatment provisions in Article B.
- Friday (22 September), starting at 10:00 AM, Room S2 has been reserved for an open-ended meeting at the level of HoD+1. In this meeting, I will report back on the work undertaken during the week, outline next steps, and open the floor for an exchange of views on the text and any other matters. Members wishing to do so also will have the opportunity to update the NGR on their progress in completing their processes of acceptance of the Agreement on Fisheries Subsidies.

Technical information

For the open-ended meetings at HoD+1 level on Monday morning (18 September) and on Friday morning (22 September), Interprefy and interpretation will be available so that delegations and capital-based colleagues can join and participate if they wish. For the small group meetings, Interprefy and interpretation will be available but, as mentioned above, interventions are reserved only to delegations invited to each specific meeting. Please send any written statements to the Secretariat (tisseree.coppa@wto.org) in advance of or during the sessions.

Please note that all delegations that participated in a small group meeting during the previous fish weeks will be automatically invited to a small group meeting. Other interested delegations are invited to contact Ms Tisserée Coppa at the Secretariat (tisseree.coppa@wto.org) to express their interest to join a small group meeting. Delegations can also contact Tisserée to schedule a consultation session with me, either before or during the fish week. Logistics and session-specific invitations for these meetings will be communicated in due course.

The participants of each group will be listed right below the Interprefy link that allows you to join the meeting. We anticipate posting this information at the beginning of the fish week, when the composition of the groups should be settled. Please note, however, that our experience to date shows that there could be last minute adjustments even after that initial posting.

Thank you and I look forward to seeing you all again soon.

Ambassador Einar Gunnarsson
Chair of the Negotiating Group on Rules

WTO OMC

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ANNEX I: SCHEDULE OF THE WEEK (18 – 22 SEPTEMBER 2023)

| Time | Monday 18 September | Tuesday 19 September | Wednesday 20 September | Thursday 13 July | Friday 14 July |
|------------------------------|--|---|---|-----------------------------|--|
| 10:00AM to 1:00PM | 10AM Opening session: Open-ended meeting at the level of HoD+1 | 10AM Small-group meeting (1 st group) | 10AM Small-group meeting (3 rd group) | -- | 10AM Closing session: Open-ended meeting at the level of HoD+1 |
| 3:00PM to 6:00PM | -- | 3PM Small-group meeting (2 nd group) | 3PM Small-group meeting (3 rd group) | -- | -- |



Masaganang Agrikultura,
Maunlad na Ekonomiya

Republic of the Philippines
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Date Prepared: September 8, 2023

| | |
|------------------|--|
| Activity | Stakeholders' Brieting/Consultation for the Domestic Acceptance of the World Trade Organization – Fisheries Subsidies Agreement |
| Agenda | <ul style="list-style-type: none"> • Inform key stakeholders about the World Trade Organization - Fisheries Subsidies Agreement (FSA) and its implications for the fisheries sectors. • Presentation on the previously ratified World Trade Organization – Trade Facilitation Agreement submitted in Geneva. • Gather opinions, concerns, and recommendations from stakeholders to be taken into account during the negotiation process on the annexes of FSA. • Facilitate productive discussions with stakeholders to address their concerns as well as enhance their understanding of the FSA. • Obtain a Certificate of Concurrence from the TCWM members, the municipal and commercial fishing sectors, and other stakeholders expressing their support for the proposed domestic acceptance of the WTO-FSA. |
| Date | September 5, 2023 |
| Venue | Microtel Hotel by Wyndham UP Technohub in Quezon City |
| Attendees | <ul style="list-style-type: none"> • Technical Committee on World Trade Organization Matter (TCWM)and relevant National Government Agencies; • Representatives from BFAR RFOs and Marine Capture Subsectors (All Regions); and • Technical Working Group for WTO-FSA |

Background

The World Trade Organization (WTO) is a global international organization that facilitates international trade rules between nations and promotes global economic growth. One significant area of focus for the WTO is the regulation of fisheries subsidies. The UN Sustainable Development Goal (SDG) 14.6 provides a framework for the prohibition of certain fisheries subsidies contributing to overcapacity and overfishing. It also calls for the elimination of subsidies contributing to illegal, unreported, and unregulated fishing. Moreover, it emphasizes the need for appropriate and effective special and differential treatment for developing and least developed countries as part of the WTO fisheries subsidies negotiation.

In June 2022, the WTO passed the "Agreement on Fisheries Subsidies" as part of the Ministerial Decision after the 12th Ministerial Conference. The Negotiating Group on Rules will continue negotiations based on the outstanding issues outlined in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 to make recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies. This includes further disciplines on subsidies contributing to overcapacity and overfishing while recognizing the importance of special and differential treatment for developing and least-developed country Members.

In accordance with the recommendation from the WTO-Permanent Mission and the invitation from the Department of Trade and Industry, the Department of Agriculture-Bureau of Fisheries and Aquatic Resources (DA-BFAR) has confirmed in-person participation during the 2nd Fish Week. Following the successful "Fish Week" negotiations session, ensuring an inclusive and transparent decision-making process is crucial to engaging relevant stakeholders in the domestic acceptance of the WTO-Fisheries Subsidies Agreement before its ratification.

Hence, the purpose of this stakeholders' consultation is to engage the key stakeholders—including relevant offices such as the Department of Foreign Affairs, the Department of Agriculture (DA), the DA-National Fisheries Research and Development Institute, the Department of Trade and Industry (DTI), the DTI-Bureau of Internal Trade Relations, as well as other key members of the Technical Committee on WTO Matters, BFAR Regional Fisheries Offices, and representatives from the Municipal and Commercial Fishing Sectors—to provide them with information and gather their opinions and recommendations, and address concerns related to the provisions of the Fisheries Subsidies Agreement, which may also be proposed during the ongoing negotiation process on its annexes. This activity also calls for stakeholders' approval as a prerequisite for the FSA endorsement for domestic executive acceptance.

The consultation is also consistent with Republic Act 10654 under Rule 65.2 (b), which requires the Bureau for stakeholder participation in formulating rules and regulations that would affect the fisheries sector, further emphasizing the importance of engaging relevant stakeholders in the decision-making process.

| DISCUSSIONS | Agreements/Remarks |
|--|---|
| <p>1. The Stakeholders' Orientation and Consultation commenced promptly at 9:30 AM on September 5, 2023, at Microtel Hotel by Wyndham in Quezon City. Ms. Claribel Salazar, an Aquaculturist I from the Capture Fisheries Division, served as the program emcee and facilitated the preliminaries. Mr. Joeren Yleaña acknowledged the presence of over 100 participants, both physically and virtually, which included members of the Technical Committee on WTO matters, representatives from municipal and commercial sectors, BFAR Regional Fisheries Offices, and other invited participants.</p> <p>2. To formally begin the program, Assistant Director for Technical Services, Isidro M. Velayo, MDM, extended a warm welcome on behalf of BFAR National Director, Atty. Demosthenes R. Escoto. In his remarks, AD Velayo highlighted how the WTO Fisheries Subsidies Agreement affects the Philippine fisheries and encouraged participants to engage in open and productive discussions as they aim to understand its effects on the country's fisheries.</p> <p>3. Mr. Yleaña, Supervising Aquaculturist from the BFAR Capture Fisheries Division presented the WTO Fisheries Subsidies Agreement, including W5 and W20. He emphasized that the WTO Agreement on Fisheries Subsidies was adopted at the 12th Ministerial Conference on 17 June 2022. This serves as a binding set of global rules to curb the harmful subsidies to the fishing sector, promoting ocean sustainability and preserving fish stocks. The scope of the agreement applies to subsidies to marine wild capture fishing and fishing-related activities. In-order for the agreement to put into force, at least 2/3 or 109 member countries must deposit formal acceptance to take into force. To date, there are already 42 member countries that have deposited their acceptance of the agreement</p> <p>4. He said that in principle, the adopted "Agreement" in the 12th Ministerial Conference laid out measures to eliminate subsidies that support IUUF. On the other hand, the measures to provide "disciplines" to subsidies contributing to overcapacity and overfishing (OCOF) are carefully negotiated in a series of "Fish Week" this 2023 by the Negotiating Group on Rules balancing with the effective special and differential treatment (S&DT) for developing and least-developed countries. It is targeted that a single document for disciplines of subsidies that contribute to OCOF will be adopted in the 2024 Ministerial Conference. The Agreement is aligned with the United Nations Sustainable</p> | <ul style="list-style-type: none"> • The stakeholders expressed their support for the ratification of the WTO-FSA to ensure the long-term sustainability of our fishery resources, expand market access, and promote global cooperation. • Their recommendations emphasized that we are now moving towards capacity/fisheries-based fisheries management of our marine resources. Their messages of support included recommendations to safeguard our interests as developing states in the current drafting/negotiations for creating "disciplines" regarding subsidies contributing to overcapacity and overfishing. This is to ensure Special and Differential Treatment (S&DT) as a developing state and to provide us with policy space in our programs for supporting our small-scale fisheries for developmental, food security, disaster relief, and livelihood purposes. • The DTI - Bureau of International Trade Relations advised the Da-BFAR to request the CTRM and TRM-CTWM to present the WTO-FSA to fast-track the issuance of a Certificate of Concurrence. • Way forward: <ul style="list-style-type: none"> - Request the inclusion of the Presentation of the WTO Agreement on Fisheries Subsidies Agreement in the Agenda for the Special Joint Committee on Tariff and Related Matters (CTRM) and TRM – Technical Committee on WTO Matters (TCWM) on October 5, 2023. - Send out official letters to 17 member agencies under the Technical Committee on WTO matters to solicit a Certificate of Concurrence. |

Development Goal 14.6, which provides a framework for the elimination of subsidies that support Illegal, Unreported, and Unregulated Fishing (IUUF) and the prohibition of certain fisheries subsidies contributing to overcapacity and overfishing while recognizing the need for appropriate and effective special and differential treatment (S&DT) for developing and least-developed countries.

5. He finally said that the DA-BFAR requested from the concerned DFA office the domestic process of acceptance/ratification of the WTO-Fisheries Subsidy Agreement in the 4th quarter of 2022.
6. In the presentation delivered by Ms. Norma S. Arpafo, Officer-in-Charge, Multilateral Relations Division at the Bureau of International Trade Relations, Department of Trade and Industry, valuable information into the Philippine Ratification of the World Trade Facilitation Agreement (TFA).
7. Ms. Arpafo commenced her presentation with a brief background on the WTO TFA, highlighting that its negotiations were successfully concluded at the 9th WTO Ministerial Conference held in Bali, Indonesia, in December 2013. The TFA addresses expediting the movement, release, and clearance of goods, with provisions for cooperation between customs and other authorities, as well as technical assistance and capacity building. Notably, it allows developing and least-developed countries to set their implementation timetables.
8. The Agreement entered into force on February 22, 2017, with 156 WTO Members accepting it, including the Philippines, which was the 95th WTO member to do so, depositing its Instrument of Acceptance on October 27, 2016. Ms. Arpafo also outlined the various categories of commitments, including Category A, B, and C.
9. The timeline of the Philippine Ratification of the WTO TFA was presented meticulously, demonstrating the lengthy process that involved consultations with relevant agencies, Cabinet-level approvals, and interactions with the WTO Secretariat. Key milestones included a briefing with then President Benigno S. Aquino III in January 2016, subsequent revisions to the Instrument of Acceptance, and its final signing by President Rodrigo R. Duterte in October 2016.
10. Moreover, Ms. Arpafo highlighted the numerous agencies that were requested to submit Certificates

- Present the WTO-FSA to the Cabinet-level NEDA Board Committee on Tariff and Related Matters on October 10, 2023.
- Request for inclusion of the FSA in the agenda of the Special Joint CTRM and TCTRM

of Concurrence (COCs), underscoring the collaborative and inter-agency effort involved in this vital ratification process.

11. Likewise, Mr. Marlito C. Cabuños, Agriculture Attaché at the Office of the Agriculture Counsellor, Philippines Permanent Mission to the WTO in Geneva, Switzerland, on the 5th of September 2023, significant updates on the ongoing "second wave" fisheries subsidies negotiations were shared. His presentation provided a comprehensive overview of the mandate, objectives, and focus of these negotiations, as outlined in Paragraph 4 of the Fisheries Subsidies Agreement. He further said that the primary goal remains to reach a comprehensive agreement on fisheries subsidies, with a keen focus on disciplining subsidies contributing to overcapacity and overfishing (OCOF) and ensuring appropriate special and differential treatment (S&DT) for developing and least developed country Members.
12. Mr. Cabuños elucidated the various stages of the negotiation process, including the Fish Week Cluster of Meetings, Small Group Sessions, Bilateral Consultations, and Text-Based Negotiations, with a particular emphasis on the upcoming Fish Week scheduled for 18-22 September 2023. Additionally, the presentation acknowledged the member countries that had deposited the instrument of acceptance as of the reporting date, September 5th, 2023, and expressed appreciation for the generous contributions made to the Fisheries Funding Mechanism by various donors.
13. After the presentations by the Resource Persons, an open forum was conducted to address the issues and concerns of the stakeholders, especially those from the municipal and commercial subsectors.

xxx

Prepared by: DENNIS JAMES L. PIOLLO

Noted by: RAFAEL V. RAMISCAL

Photodocuments



**STAKEHOLDERS' BRIEFING/CONSULTATION FOR THE DOMESTIC ACCEPTANCE OF
THE WORLD TRADE ORGANIZATION – FISHERIES SUBSIDIES AGREEMENT**

*September 05, 2023
Microtel Hotel by Wyndham UP Technohub, Quezon City*

| PROGRAM OF ACTIVITIES | | |
|------------------------------|---|--|
| Time | Activity | Responsible Person/Office |
| 8:30 AM | Arrival of guests/participants and registration | CFD Secretariats |
| 9:30 AM | Preliminaries - Prayer - National Anthem | Audio-Visual |
| | Acknowledgment of Participants | Facilitator |
| | Welcome Address | ATTY. DEMOSTHENES R. ESCOTO <i>National Director, BFAR</i> |
| | Opening Message and WTO-FSA Implications to the Philippines' Fisheries | ISIDRO M. VELAYO, JR., MDM <i>Assistant Director for Technical Services</i> |
| 10:00 AM | Presentation on WTO-Fisheries Subsidy Agreement Including W5 and W20 | JOEREN S. YLEANA <i>Supervising Aquaculturist</i> |
| 10:30 AM | Presentation on the previously Ratified World Trade Organization – Trade Facilitation Agreement submitted in Geneva | DTI-Bureau of International Trade Relations |
| 11:30 AM | Lunch Break | - |
| 1:00 PM | Update on the Negotiating Group on Rules (NGR) Fisheries Subsidies Fish Week in Geneva, Switzerland | MARLITO C. CABUÑOS <i>Agriculture Attaché Office to the WTO, Geneva, Switzerland</i> |
| 2:00 PM | Open Forum/Discussion: | Moderator |
| 2:45 PM | Discussion on the Certificate of Concurrence | ATTY. MUTYA S. ALEGRE <i>Legal Division</i> |
| 3:00 PM | Wrap-up | JOEREN S. YLEANA <i>Supervising Aquaculturist, CFD</i> |
| 3:30 PM | Closing Remarks | ISIDRO M. VELAYO, JR. <i>Assistant Director for Technical Services</i> |



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CERTIFICATE OF CONCURRENCE

This is to certify that the _____ has been consulted and certifies its concurrence with the requested action for the ratification of the ***Agreement on Fisheries Subsidies*** adopted at the 12th Session of the WTO Ministerial Conference held on 12 – 17 June 2022 in Geneva, Switzerland.

 Date

(NAME OF HEAD OF AGENCY)
(Position)