

WTO MC13談判議題進展與成果研討會

漁業補貼協定第二波談判進展

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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.

At start of “Fish Month”, WTO members endorse draft text as basis for work towards MC13

At the 15 January opening of “Fish Month”, WTO members agreed to use the latest draft text on curbing subsidies contributing to overcapacity and overfishing as the basis for negotiations ahead of the 13th Ministerial Conference (MC13) in Abu Dhabi on 26-29 February. The chair of the fisheries subsidies negotiations, Ambassador Einar Gunnarsson (Iceland), said the draft is intended to help members to reach agreement over the next four weeks on a “clean” text for submission to ministers.



① At start of “Fish Month”, WTO members endorse draft text as basis for work towards MC13



WORLD TRADE
ORGANIZATION

WT/MIN(24)/W/10

16 February 2024

(24-1409)

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**Ministerial Conference
Thirteenth Session
Abu Dhabi, 26-29 February 2024**

Original: English

ADDITIONAL PROVISIONS ON FISHERIES SUBSIDIES

DRAFT TEXT

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



WORLD TRADE
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16 February 2024

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ADDITIONAL PROVISIONS ON FISHERIES SUBSIDIES

DRAFT TEXT

Addendum

The attached document from the Chair of the Negotiating Group on Rules is the explanatory note accompanying the Additional Provisions on Fisheries Subsidies circulated in document WT/MIN(24)/W/10.

Structure of the Core OCOF Discipline

Article A.1

- Two-Tier Hybrid Approach
 - Hybrid: List vs. Effect
 - Qualified Prohibition (a statement prohibition with a list of prohibited subsidies + qualification based on sustainability elements)
 - Tiered Approach: the principle of common but differentiated responsibility (CBDR)

Core OCOF Discipline

Article A.1

- “No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing.”
- For the purposes of this paragraph, subsidies that contribute to overcapacity or overfishing include²:
 - (a) subsidies to construction, acquisition, maintenance, modernisation, renovation or upgrading of vessels; (b) subsidies to the purchase or maintenance of machines and equipment for vessels (including fishing gear and engine, fish-processing machinery, fish-finding technology, refrigerators, or machinery for sorting or cleaning fish); (c) subsidies to the purchase/costs of fuel, ice, or bait; (d) subsidies to costs of personnel, social charges, or insurance; (e) income support of vessels or operators or the workers they employ except for such subsidies implemented for subsistence purposes during seasonal closures; (f) price support of fish caught; (g) subsidies to at-sea support; and (h) subsidies covering operating losses of vessels or fishing or fishing related activities.

Core OCOF Discipline

Article A.1

- For the purposes of this paragraph, subsidies that contribute to overcapacity or overfishing include²:
- New Footnote 2: For greater clarity, the subsidies listed in this provision shall not be deemed to contribute to overcapacity or overfishing when granted or maintained in accordance with Article A.1.1.
- Article A.1.1: Sustainability-based Conditionality

Two-Tiered Sustainability-based Conditionality

Article A.1.1(a) and (b)

- Exclusion
 - Not least developed country (LDC) Members
 - Not developing country Members not meeting the *de minimis* threshold under Article B.2
- First step: the identification of the applicable tier for Members based on the criteria in Article A.1.1(b)
 - As Article A.1.1(a) top tier generally applies to all Members.
 - Article A.1.1 (b) remove certain **developing country Members** from the scope of the top tier,
 - that do not fall under Article B.5 (special provision for excluding certain developing country Members from SDT)
 - that are not amongst the top-ten largest providers of fisheries subsidies by annual aggregate value as notified under Article C.4
 - that are not significantly engaged in far distant water fishing.

Two-Tiered Sustainability-based Conditionality

Article A.1.1(a) and (b)

- Second step: Different level of standards and procedures
 - Article A.1.1(a): demonstration requirement in notifications within 6 months: to demonstrate that measures are implemented to maintain the stocks in question at a biologically sustainable level, including in the notifications an explanation of how their fisheries management measures ensure or can reasonably be expected to ensure that the stocks in question are maintained at a biologically sustainable level.
 - Article A.1.1(b): demonstration requirements in regular notifications: demonstrates that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.
- Two difference:
 - 1) what Members would need to notify.
 - 2) how frequently they would need to provide their notifications.

The Top Tier

Article A.1.1(a)

- A subsidy is not inconsistent with Article A.1 if the subsidizing Member demonstrates that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.
- Such demonstration shall include an explanation of how those measures ensure, or can reasonably be expected to ensure, that the stock or stocks in the relevant fishery or fisheries are maintained at a biologically sustainable level and shall be made through a notification by the subsidizing Member as soon as practicable and no later than six months after a new subsidy program comes into effect, and thereafter in the Member's regular notifications of fisheries subsidies under Article 25 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and Article 8.1 of the Agreement on Fisheries Subsidies (AFS).

The Lower Tier

Article A.1.1(b)

- (b) With the exception of Members covered by Article B.5 and notwithstanding Article A.1.1(a), for a developing country Member that is:
 - (i) neither amongst the 10 largest providers of fisheries subsidies by annual aggregate level of fisheries subsidies as notified to the Committee on Fisheries Subsidies (the Committee) under Article C.4;
 - (ii) nor significantly engaged in fishing or fishing related activities in any area farther than one Food and Agriculture Organization of the United Nations (FAO) Major Fishing Area beyond the one(s) adjacent to the Member's territorial sea,
- a subsidy is not inconsistent with Article A.1 if the subsidizing Member demonstrates through its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8.1 of the AFS that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.

A2: Beyond Jurisdiction Subsidies; Distance Water Fishing

a prohibition of subsidies contingent on fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction

- Hotly contested
 - For
 - Against: delete or move to Article A.1.1
 - Compromises: limited flexibility
- Not strong enough: delete the contingency, same as limiting the flexibilities under Article A.1.1(a) to own EEZ

Article B: Special and Differential Treatment

B1: LDC Members

- B.1 The prohibition under Article A.1 shall not apply to LDC Members. A graduated LDC Member not covered by the special and differential treatment provided for in Article B.2 may grant or maintain the subsidies referred to in Article A.1 to fishing or fishing related activities for a maximum of [X] years after a decision of the UN General Assembly to graduate that Member from the "Least Developed Countries" category.

Article B: Special and Differential Treatment

B2: *De minimis* threshold

- A developing country Member may grant or maintain the subsidies referred to in Article A.1 to fishing or 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.2 when its share of the global volume of marine capture production falls back below the threshold for three consecutive years.

Article B: Special and Differential Treatment

B3: Transitional Period

- B.3 (a): Except as provided for in Article B.5, a developing country Member not covered by the special and differential treatment provided for in Article B.1 or Article B.2 may grant or maintain the subsidies referred to in Article A.1 to fishing or fishing related activities within its EEZ, and in the area and for species under the competence of an RFMO/A through which the Member is authorized to engage in such fishing or fishing related activities, for a maximum of [X] years after the entry into force of these Additional Provisions.

Article B: Special and Differential Treatment

B4: Small scale and artisanal fishing

- B.4 (a): Except as provided for in Article B.5, a developing country Member may grant or maintain the subsidies referred to in Article A.1 for small scale and artisanal fishing or fishing related activities that are primarily low income, resource poor or livelihood in nature as operationally defined by a Member²¹, in its jurisdiction up to [12] [200] nautical miles measured from the baselines, including archipelagic baselines.

Article B: Special and Differential Treatment

B5: Exclusion of SDT Provisions

- B.5: Article B.3 and Article B.4 shall not apply to a developing country Member significantly engaged in fishing or fishing related activities in any area farther than one FAO Major Fishing Area beyond the one(s) adjacent to the Member's territorial sea.
- Footnote 23: For the purposes of these Additional Provisions, a Member shall be considered to be significantly engaged in the fishing or fishing related activities referred to in this paragraph if the combined volume of the marine capture production of its vessels or operators in the relevant FAO Major Fishing area(s) exceeds 2 per cent of the total volume of marine capture production of that Member's vessels or operators.
- ALT B.5: Developing country *Members* with competent fisheries management capabilities are encouraged to make a binding commitment not to avail themselves of Article B.1, Article B.2, Article B.3, and Article B.4.

Article C: Notification and Transparency

- Debated Provisions:
 - Article C.2(a): the notification of information indicating the use of forced labour by vessels or operators.
 - Article C.3: the notification of information concerning non-specific fuel subsidies.
 - [C.6 A Member may invoke Article A.1.1, Article B.2, Article B.3, or Article B.4 only in respect of subsidies which it has notified to the Committee under Article 25 of the SCM Agreement and Article 8.1 of the AFS.]
 - “Article C.6 reflects some Members' willingness to show more flexibility on the wording of Article B.4 provided that transparency is generally ensured throughout the Additional Provisions.”

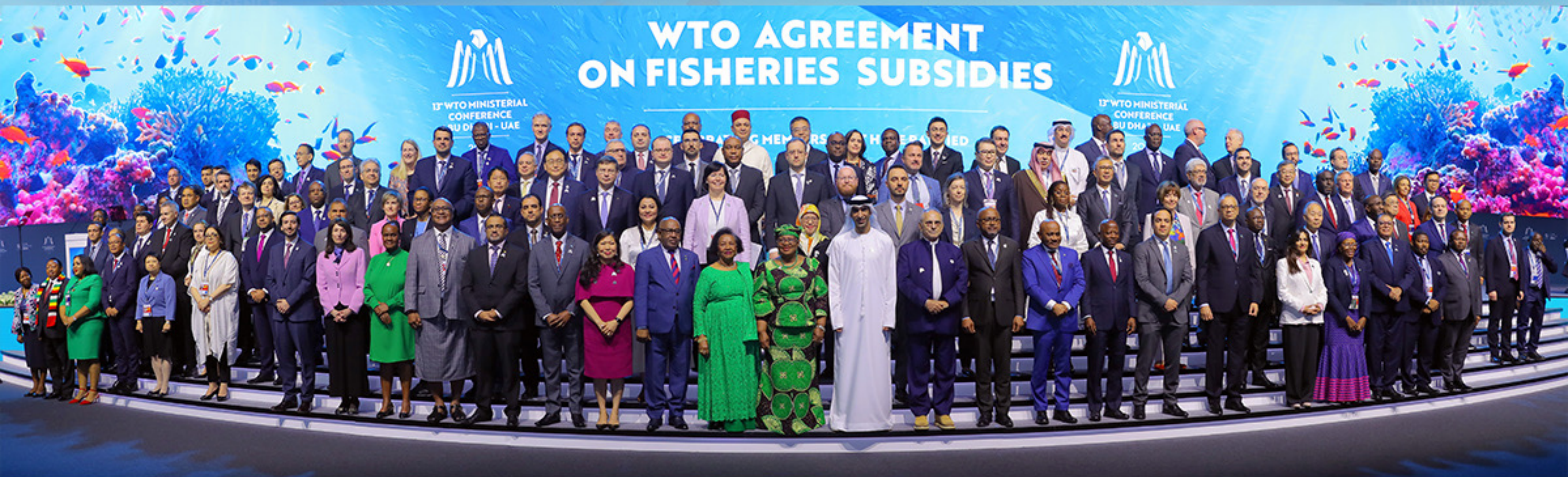
ARTICLE 12: TERMINATION OF AGREEMENT IF COMPREHENSIVE DISCIPLINES ARE NOT ADOPTED

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.

Article E: Relationship with AFS

- E.1: These Additional Provisions, along with the AFS, shall constitute the comprehensive disciplines referred to in Article 12 of the AFS and shall achieve a comprehensive agreement on fisheries subsidies in accordance with paragraph 4 of the Ministerial Decision on the AFS adopted at the Twelfth Session of the WTO Ministerial Conference.
- E.2: Article 1, Article 2, Article 6, Article 7, Article 8, Article 9, Article 10, and Article 11 of the AFS shall apply, *mutatis mutandis*, to these Additional Provisions, in addition and without prejudice to any cross-references in these Additional Provisions to specific provisions of the AFS.

WTO AGREEMENT ON FISHERIES SUBSIDIES



MC13: Hope, Not Delivered

- Hope before and during MC13
- Main difficulty: Special and differential treatment provisions, esp. the length of transition periods for developing countries. Also opposition that it did not do enough.
- Then, India, during a heads-of-delegation meeting, insisted it could not accept because the current texts interfered with its exclusive economic zone.
- India and Brazil continued to oppose.
- Indian Commerce and Industry Minister Piyush Goyal: "India continues to retain full policy space for the benefit of our farmers, our fishermen, and in every respect, we have been able to take India's interests to the highest level possible."

- Ambassador Gunnarsson said:
“Members came very close to adopting the Additional Provisions on Fisheries Subsidies at the 13th Ministerial Conference (MC13). We continue to have a mandate to negotiate on disciplines on subsidies contributing to overcapacity and overfishing and the related special and differential treatment. Many members are calling for the Negotiating Group on Rules to capture the progress made before and at MC13 and to bring the negotiations to conclusion as soon as possible.”

DDG Ellard and fisheries subsidies negotiations chair share next steps at World Ocean Summit

At a “fireside chat” of the World Ocean Summit on 13 March, organized by The Economist Group, WTO Deputy Director-General Angela Ellard and Ambassador Einar Gunnarsson of Iceland, chair of the negotiations on fisheries subsidies, provided an update on the work ahead to implement the Agreement on Fisheries Subsidies and to capture progress made in the second wave of negotiations for additional provisions.



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