



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.

ARTICLE A: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING

A.1¹ 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.

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.³ 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

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

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.

³ For the purposes of these Additional Provisions, the term "biologically sustainable level" shall have the same meaning as in footnote 11 of the Agreement on Fisheries Subsidies (AFS). Members acknowledge that the biologically sustainable level of stocks may be influenced by factors beyond the control of the subsidizing Member.

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).^{4,5}

- (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 engaged⁶ in fishing or fishing related activities in any area farther than one Food and Agriculture Organization of the United Nations (FAO) Major Fishing Area⁷ beyond the one(s) adjacent to the Member's territorial sea⁸,

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.^{9,10}

- (c) The information¹¹ provided in the notification referred to in Article A.1.1(a) and Article A.1.1(b) shall enable other Members to effectively evaluate the subsidy according to the conditions set out in Article A.1.1 and shall include the following for the relevant fish stock or stocks:
- (i) conservation and management measures in place;
 - (ii) status of the fish stocks¹² (e.g., overfished, maximally sustainably fished, underfished, or unknown) and the reference points used, and whether such stocks are shared¹³ with any other Member or are managed by a Regional Fisheries Management Organization or Arrangement (RFMO/A)¹⁴;

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

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

⁶ For the purposes of these Additional Provisions, a Member shall be considered to be significantly engaged in the fishing or fishing related activities referred to in this subparagraph if the combined volume of marine capture production of its vessels or operators in the relevant FAO Major Fishing area(s) exceeds 2 per cent of the total volume of marine capture production of that Member.

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

⁸ For the purposes of this Article, if an FAO Major Fishing Area that is adjacent to the Member's territorial sea is directly connected to another FAO Major Fishing Area through a maritime canal, the latter will be deemed to be one FAO Major Fishing Area beyond the one(s) adjacent to a Member's territorial sea.

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

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

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

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

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

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

- (iii) catch data by species or group of species¹⁵ as compiled by a Member; and
- (iv) information on the fleet capacity as compiled by a Member.

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

- A.2 (a) [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)].^{[16],17}
- (b) [Article A.2(a) shall not apply to the non-collection from the operators or vessels of government to government payments under agreements and other arrangements with coastal Members or coastal non-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 A.1.1 are met.]]

ARTICLE B: SPECIAL AND DIFFERENTIAL TREATMENT

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.¹⁸

B.2 A developing country Member¹⁹ 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.

- 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.²⁰ A developing country Member intending to invoke this provision shall

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

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

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

¹⁸ Article B.3(b) and (c) shall apply, *mutatis mutandis*, to a graduated LDC Member not covered by the special and differential treatment provided for in Article B.2, from the end of the period referred to in the second sentence of Article B.1.

¹⁹ For greater clarity, this includes graduated LDC Members falling within the [0.8] per cent threshold.

²⁰ When the FAO data circulated by the WTO Secretariat for the purpose of Article B.2 show for the first time that a Member's share of annual global volume of marine capture production exceeds the threshold in Article B.2 for three consecutive years, such that the Member is no longer covered by Article B.2, Article B.3(b) and (c) shall apply *mutatis mutandis* to that Member as from that date. If the date on which the Member ceases to be covered by Article B.2 on this basis occurs during the period referred to in the first sentence of Article B.3(a), the Member shall benefit from the remainder of that period.

inform the Committee in writing within one year of the date of entry into force of these Additional Provisions.

- (b) Subsidies granted or maintained under subparagraph (a) shall be exempt from actions based on Article A.1 and Article 10 of the AFS for a period of two additional years after the end of the period referred to in the first sentence of subparagraph (a).
 - (c) A developing country Member to which subparagraph (b) applies may request no more than two two-year extensions of the period referred to in that provision through the Committee. The Committee shall take into account the specific circumstances of that Member, and shall give due and sympathetic consideration to developing country Members that demonstrate concrete progress toward implementing Article A.1.
- B.4 (a) 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.
- (b) A developing country Member availing itself of subparagraph (a) shall notify, through its regular notification under Article 25 of the SCM Agreement and Article 8.1 of the AFS, its operational definition(s) of the fishing or fishing related activities referred to in subparagraph (a), and promptly inform the Committee of any modifications thereafter.²²

B.5 Article B.3 and Article B.4 shall not apply to a developing country Member significantly engaged²³ in fishing or fishing related activities in any area farther than one FAO Major Fishing Area²⁴ beyond the one(s) adjacent to the Member's territorial sea.²⁵

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.4.²⁶

ARTICLE C: NOTIFICATION AND TRANSPARENCY²⁷

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

²¹ For greater certainty, a range of characteristics may be taken into account as guiding points when considering "small scale and artisanal fishing or fishing related activities" including: size of fishing vessel; level of motorisation; level of mechanisation; type of fishing gear; refrigeration or storage on board; labour or crew; ownership; time commitment (full time, part-time, seasonal); duration of fishing trips; disposal of catch; utilization of catch (level of processing, preservation, or value-add); integration into economy or management system.

²² 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.

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.

²⁴ As delineated in the FAO Major Fishing Area map in effect at the time of adoption of these Additional Provisions, as circulated by the WTO Secretariat.

²⁵ For the purposes of this Article, if an FAO Major Fishing Area that is adjacent to the Member's territorial sea is directly connected to another FAO Major Fishing Area through a maritime canal, the latter will be deemed to be one FAO Major Fishing Area beyond the one(s) adjacent to a Member's territorial sea.

²⁶ Such binding commitments include statements made by eligible Members to [...], such as those made [placeholder for references to such binding commitments made before adoption of these Additional Provisions] and will be recorded by the Council for Trade in Goods and will be compiled and published publicly on the WTO website.

²⁷ Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be available for the purposes of implementing these Additional Provisions.

- C.2 Each Member shall notify the Committee in writing on an annual basis of:
- (a) any vessels and operators for which the Member has information that reasonably indicates the use of forced labour, along with relevant information to the extent possible; and
 - (b) a list of any agreements in force, or existing arrangements, for obtaining access to 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 AFS, and to the extent possible, each Member shall notify the Committee in writing on an annual basis of its fuel subsidies granted or maintained to fishing or fishing related activities that are not specific within the meaning of Article 2 of the SCM Agreement.

C.4 Each Member shall notify to the Committee information that is necessary for the determination of its annual aggregate level of fisheries subsidies, building upon its existing notifications under Article 25 of the SCM Agreement and Article 8.1 of the AFS. The first notification of this information shall be submitted not later than 120 days from the entry into force of these Additional Provisions. Thereafter, this information shall be provided in the Member's regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8.1 of the AFS.²⁸ Each Member shall submit this information through a template the content and form of which shall be previously agreed by Members.

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

[C.6 A Member may invoke Article A.1.1, 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.]

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

ARTICLE D: OTHER OVERCAPACITY- AND OVERFISHING-RELATED PROVISIONS

D.1 Not later than three years after the expiry of the transition period referred to in Article B.3(a), the Committee shall review the operation of these Additional Provisions. This review shall assess, in particular, the overall impact on overcapacity and overfishing of these Additional Provisions and shall identify any necessary modifications to improve their effectiveness, taking into account the objectives of these provisions. The Committee shall report to the Council for Trade in Goods the outcome of this review, including any resulting proposals to amend the text of these Additional

²⁸ In accordance with the applicable periodicity of such notifications, including as provided for in footnote 13 of the AFS.

Provisions. Thereafter, these issues shall be addressed in the periodic reviews under Article 9.4 of the AFS.

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

ARTICLE E: RELATIONSHIP WITH AGREEMENT ON FISHERIES SUBSIDIES

E.1 These Additional Provisions, 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.²⁹

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 Provisions³⁰, in addition and without prejudice to any cross-references in these Additional Provisions to specific provisions of the AFS.

²⁹ WT/MIN(22)/33 – WT/L/1144.

³⁰ For greater certainty, Article 10.2 of the AFS shall apply to consultations and the settlement of disputes under Article A, and Article A shall not prevent a Member from granting a subsidy for disaster relief in accordance with Article 11.1 of the AFS.