New draft starts text-based rush for WTO fish subsidies’ ‘missing piece’

The text is on subsidies contributing to overcapacity and overfishing, with an accompanying explanation from the chair. Members want to complete the deal by February 2024.

Revised September 9, 2023

The chair of the World Trade Organization’s fisheries subsidies negotiations and Iceland’s ambassador, Einar Gunnarsson, circulated a new draft text on September 4, 2023, on disciplines for subsidies contributing to overcapacity and overfishing — the “missing piece” in the June 2022 agreement.

Those disciplines are a key part of the UN Sustainable Development Goal 14, target 6, whose 2020 deadline for the WTO talks had already been missed.

The new draft allows this phase of the negotiations to focus on a text rather than more general principles. These talks involve the whole WTO membership. Following the usual practice of his predecessor, Santiago Wills, Gunnarsson also circulated detailed notes explaining the draft’s contents.

Gunnarsson was careful to stress that the draft “is intended to be used as the starting point for the text-based phase” of these talks. Members should amend it to build consensus, he said. “As such, this document is without prejudice to any member’s positions or views, whether or not reflected herein.”

His notes include comparisons with two earlier drafts. Documents WT/MIN(22)/W/20 (abbreviated to “W20”), the draft that then-chair Wills circulated on June 10, 2022 for the WTO Ministerial Conference (“MC12”), and WT/MIN(21)/W/5 (abbreviated to “W5”) of November 24, 2021. This was shortly before the Ministerial Conference was originally due to start, only to be postponed to June 2022 because of the COVID19 pandemic and travel restrictions.

The new draft also refers to the agreement eventually reached at that Ministerial Conference on June 17, 2022, after several fraught late-night sessions. This required a major compromise —the provision on subsidies that contribute to overcapacity and overfishing was stripped bare as members remained deadlocked over its content.

The ministers agreed to complete the deal by the next Ministerial Conference (“MC13”), scheduled to be held in Abu Dhabi in February 2024, now only five months away. Countries upset by the deadlock managed to insert a time-bomb into the agreement. If the missing piece is not settled within four years of the agreement taking effect, the whole deal will terminate. To take effect, two thirds of the members have to ratify it. So far, ratification has been slow.
The draft has four articles: A. **subsidies contributing to overcapacity and overfishing** (the main content); B. **special treatment for developing countries**; C. **notification and transparency**; and D. **other provisions**.


The main issues covered in the draft are:

- **Broadly prohibiting** “subsidies contributing to overcapacity and overfishing” (Article A.1)

- **Defining or identifying** “subsidies contributing to overcapacity and overfishing”. A list — points (a) to (h) — identifies which subsidies would qualify and therefore be banned. The draft says the banned subsidies “include” (a) to (h) meaning some subsidies not on the list could also be considered to fit the bill.

The chair notes that the list is not settled yet and that some members would prefer the list to be definitive so that only the types of subsidies specifically listed are banned.

The chair uses the phrase “a hybrid approach”. This means combining the broad prohibition with a list of types of subsidies. Anything on the list is specifically banned. In addition, the broad prohibition also allows anything else that might be considered to “contribute to overcapacity and overfishing” to be challenged as well. In practice that could be determined through legal dispute settlement.

Countries arguing for only a specific list of banned subsidies are rejecting the hybrid approach. The list-only approach rules out the need for interpretation. If on the list it is by definition a subsidy that “contributes to overcapacity and overfishing”. Nothing else is.

- **When fisheries subsidies are legitimate: the sustainability test** (Article A.1.1). This is achieved by providing information — notifications — to show that the subsidies are for conserving fish stocks. The requirement builds on the “regular” (annual) notifications under the WTO [Subsidies and Countervailing Measures Agreement](https://tradebetablog.wordpress.com/2023/09/08/draft--fish--subsidies--missing--piece--sep--2023/) (disciplining all subsidies) and the [2022 Fisheries Subsidies Agreement](https://tradebetablog.wordpress.com/2023/09/08/draft--fish--subsidies--missing--piece--sep--2023/) (adding criteria for fish). It spells out what additional information is needed. The awkward double negative “not inconsistent” means, in effect, “not banned”. This provision applies to all but the largest fishing nations.

- **Tighter disciplines for the largest fishing nations** (Article A.1.2). This is new. The draft draws on the several rounds of meetings in 2023, but will have to be negotiated from scratch. It has two key elements:

  - *Defining which nations qualify as “largest”*. How many are there? Based on actual catch size or the percentage of global production? Whose figures?
The draft contains Xs and other means of filling in the details. All of this will have to be negotiated.

*Stricter notification requirements and sustainability test.* The largest fishing nations would have to establish that their subsidies are legitimate by notifying each subsidy as soon as it is “designed and in effect”, on top of the annual notifications. They would also have to supply more information than in the general case, such as fleet capacity.

- **Responding to requests for information** (Article A.1.3). This is new. When asked to clarify their subsidies in the Fisheries Subsidies Committee, members would have to respond in writing, quickly and comprehensively. This would enhance the requirement of [Article 25.9 of the Subsidies Agreement](https://tradebetablog.wordpress.com/2023/09/08/draft-fish-subsidies-missing-piece-sep-2023/), specifying that the reply must be in writing and submitted in the Fisheries Subsidies Committee.

- **Banning all subsidies for fishing in international waters** (Article A.2). Paragraph (a) bans subsidies for fishing “in areas beyond the subsidizing member’s jurisdiction”. Paragraph (b) is a placeholder for possible flexibilities — without flexibilities, these subsidies would be banned outright.

- **Special treatment for developing countries** (Article B). This has three main parts. The chair indicates that members’ views differ on all three:
  
  A *transition period* allowing developing countries to delay implementing these provisions, a further period when they would be shielded from legal challenge (the “peace clause”) and (new) the possibility for a developing country to seek to prolong its “peace clause”.

  *Exemptions for artisanal small-scale fishing* (“low income, resource-poor and livelihood fishing”) within a limited distance from the shore (12 or 24 nautical miles, also to be negotiated).

  *Exemptions if the developing country is a small player*, falling below small (“de minimis”) levels. The draft offers two alternatives to be negotiated: the catch is below a low percentage of global production, or the subsidies are below a small monetary value (eg dollars).

  In addition, while applying special treatment developing countries have to make an effort to ensure their subsidies do not contribute to overcapacity and overfishing. And least-developed countries are exempt completely.

- **Notifications and transparency** (Article C) and other provisions (Article D). The draft has more details of the information members would have to provide in their notifications, including the use of forced labour (Article C.2(a), a US proposal). It leaves space for any other provisions such as on fuel subsidies (Article D).

In the table, the latest draft is in the left column with the corresponding notes from the chair on the right. To see them in their official format (pdf), the draft is here and the chair’s explanation is here.
Negotiating Group on Rules

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.

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

A.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:

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

(a) subsidies to construction, acquisition, modernisation, renovation

In more detail, the main body of Article A.1, including sub-items (a) through (h), is 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.
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 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. 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;

(ii) status of the fish stocks in the fishery for which the subsidy 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.

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8 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.
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; and

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

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

\(^d\) 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.

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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;\(^c\)

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\(^b\) 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.

\(^c\) 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...
A.1.2 (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 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.

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

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.

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 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.

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”,
### 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).\(^e\)

\(^e\) 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.

### 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.

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

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.

B.1 (a) A developing country Member may grant or maintain the subsidies which is identical to footnote 14 of the Agreement on Fisheries Subsidies, which defines shared stocks.

### Article B.1
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.

(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.

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 reflect 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 date of 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

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.

B.3 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]**

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.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.

**Article 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:

**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.
(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]

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.