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**Negotiating Group on Rules**

**FISHERIES SUBSIDIES**

**Draft Consolidated Chair Text**

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

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

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## **ARTICLE A: SUBSIDIES CONTRIBUTING TO OVERCAPACITY AND OVERFISHING**

A.1<sup>1</sup> 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 [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.

Before granting a subsidy, a Member shall consider the consequence of the subsidy on overcapacity and overfishing.

- A.1.1 (a) For a Member that is amongst the 20 largest providers of fisheries subsidies by annual aggregate value as notified to the WTO pursuant to Article C.4, a subsidy is not inconsistent with Article A.1 if the subsidizing Member demonstrates that measures are implemented that can reasonably be expected to ensure that the stock or stocks in the relevant fishery or fisheries are at a biologically sustainable level.<sup>2</sup> Such demonstration shall be made through a notification as soon as practicable and no later than three 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 SCM Agreement, Article 8 of the Agreement on Fisheries, and Article C.
- (b) For a Member not falling under Article A.1.1 (a), 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, Article 8 of the Agreement

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

<sup>2</sup> For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member or a coastal non-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. 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.

on Fisheries, and Article C that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.<sup>3</sup>

- (c) The notifications referred to in Article A.1.1 (a) and A.1.1 (b) shall be sufficiently precise to enable other Members to evaluate the consistency of the subsidy with the conditions set out in Article A.1.1 and shall include the following:
- (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 shared<sup>4</sup> with any other Member or are managed by an RFMO/A;
  - (ii) conservation and management measures in place for the relevant fish stock; and
  - (iii) to the extent possible, information on the fleet capacity in the fishery for which the subsidy is provided.

A.1.2 Any Member may, at any time, seek clarification regarding the notifications and information referred to in this Article. 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.1.3 In the case of non-notification or a notification manifestly inconsistent with Article A.1.1, the prohibition under Article A.1 shall apply.

- 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).<sup>5,6</sup>
- (b) [PLACEHOLDER: POSSIBLE FLEXIBILITY FOR SUBPARAGRAPH (a)]

## **ARTICLE B: SPECIAL AND DIFFERENTIAL TREATMENT**

B.1 The prohibition under Article A.1 shall not apply to LDC Members. A graduated LDC Member may grant or maintain the subsidies referred to in Article A.1 to fishing and fishing related activities within its Exclusive Economic Zone (EEZ) and in the area and for species under the competence of an RFMO/A through which the Member has fishing rights, 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.2 A developing country Member<sup>7</sup> 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

<sup>3</sup> For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member or a coastal non-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. 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> For greater clarity, this includes graduated LDC Members falling within the [0.8] per cent threshold after the expiry of the transition period referred to in Article B.1.

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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.6, a developing country Member not covered by Article B.1 or B.2 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 an RFMO/A through which the Member has fishing rights, for a maximum of [X] years after the entry into force of these disciplines. Thereafter, such a developing country Member that would otherwise fall under Article A.1.1(a) may instead apply Article A.1.1(b) in respect of subsidies referred to in Article A.1 for a maximum of [Y] years. 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 the first sentence of subparagraph (a).
- (c) A developing country Member to which subparagraph (b) applies may request an extension of the period referred to in that provision through the Committee on Fisheries Subsidies. The Committee shall take into account the specific circumstances of that Member, and shall give sympathetic consideration to developing country Members that demonstrate concrete progress toward implementing Article A.1.

B.4 Except as provided for in Article B.6, a developing country Member not covered by Article B.1 or B.2 may grant or maintain the subsidies referred to in Article A.1 for low income, resource poor [and][or] livelihood fishing or fishing related activities<sup>8</sup> up to [12][24] nautical miles, measured from the baselines, including archipelagic baselines.

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

B.6 A developing country Member engaged in fishing or fishing related activities in any area further than one FAO Major Fishing Area beyond the one(s) adjacent to its natural coastline shall not have access to Articles B.1, B.2, B.3, and B.4.

### **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 this 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:
- (i) the titles of the agreements or arrangements;
  - (ii) a list of their parties; and

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<sup>8</sup> For greater clarity, a range of characteristics shall define "low income, resource-poor or livelihood fishing or fishing related activities": [PLACEHOLDER]

(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 to fishing and fishing related activities that are not specific within the meaning of Article 2 of the SCM Agreement.

C.4 Not later than 90 days from the entry into force of these disciplines, each Member shall notify to the Committee on Fisheries Subsidies all information that is necessary for the determination of its annual aggregate level of fisheries subsidies. Thereafter, each Member shall submit this information to the Committee on Fisheries Subsidies in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement, Article 8 of the Agreement on Fisheries, and this Article. Each Member shall submit this information through a template the content and form of which shall be previously agreed by Members.

#### **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]

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