



Negotiating Group on Rules

FISHERIES SUBSIDIES

WORKING DOCUMENT

COMMUNICATION FROM THE CHAIR

Revision

The attached working document has emerged from the intensive work in the Negotiating Group on Rules, based on the proposals contained in document RD/TN/RL/29/Rev.3. This revision now includes elements contained in that document that were not included in TN/RL/W/274/Rev.5 and incorporates as well technical and other agreed changes. This revision thus represents a unified version of the Negotiating Group's working documents on fisheries subsidies produced to date.

This working document is the result of a collective effort by delegations, and represents an effort to develop a working text that could present with some degree of clarity the numerous issues, approaches, and views before the Group. Its purpose is to facilitate further work of the Group. It is of course entirely without prejudice to the position of any delegation, or the right of any delegation to propose further changes.

PREAMBLE

[The Ministerial Conference,] [Members hereby,]

[Recalling the mandate contained in the 2001 Doha Declaration, where Ministers agreed to clarify and improve WTO rules that apply to fisheries subsidies,

[Recalling the Hong Kong Ministerial Declaration of 2005 that appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns,]

Acknowledging the importance of the sector to development priorities, poverty reduction, livelihood, sustainable development of fisheries capacity throughout the value chain, and food security concerns of developing countries

Reaffirming our commitment under the 2030 Development Agenda to prohibit, by 2020, certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation.]

[Considering a growing consensus within the international community has been emerging on the need to act to prevent the harmful impacts of certain fisheries subsidies on sustainability of marine resources. That understanding was reflected in Paragraph 173 of the outcome document of the United Nations Conference on Sustainable Development, 'The future we want' and in the recent multilateral mandate of the 2030 Agenda for Sustainable Development of the United Nations, in which Heads of State and Government agreed on the Sustainable Development Goals (SDGs) 14.6;]

[Acknowledging the commitments established under the 2030 Agenda for Sustainable Development and notably UN Sustainable Development Goal 14 on the conservation and sustainable use of oceans, seas and marine resources for sustainable development,

Acknowledging UN Sustainable Development Goal 14 target 6 which sets out that the signatories of the 2030 Agenda for Sustainable Development should, by 2020 prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies,

Acknowledging UN Sustainable Development Goal 14 target 4 which sets out that the signatories of the 2030 Agenda for Sustainable Development should, by 2020 effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics,]

[Recognizing the urgent need to eliminate illegal, unreported and unregulated fishing and prohibit certain forms of subsidies that contribute to overfishing and overcapacity;

Acknowledging that appropriate and effective special and differential treatment for developing and least-developed country Members should be an integral part of the World Trade Organization fisheries subsidies negotiation;]

[Recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation,]

[Recalling, that the Food and Agricultural Organization (FAO) has developed relevant international plans of actions to address Illegal, Unreported and Unregulated (IUU) fishing, and overcapacity, as well as technical guidelines for responsible fisheries;

Fulfilling the fisheries subsidies' goals will be the most relevant WTO contribution to trade and environment, representing at the same time an important contribution to food security and development;]

[Recognizing that overcapacity contributes to overfishing and constitutes a serious threat to the conservation and sustainable exploitation of living marine resources,

Recognizing that the share of overfished stocks increased from 10% in 1974 to over 31% in 2013 and that this share should be decreased],

[The Members agree as follows:] [agree to establish effective disciplines on fisheries subsidies as follows:]

[Members,

Noting the harmful effect of illegal, unreported and unregulated (IUU) fishing on world fishery;

Acknowledging the goal of UN Sustainable Development Goal 17 target 10 to promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda and, in particular, Goal 14 target 6 to eliminate subsidies that contribute to IUU fishing by 2020;

Recalling the mandate from the WTO Doha and Hong Kong Ministerial Declarations, and in particular the Hong Kong Ministerial mandate that "appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns";

Recognizing the efforts made by the United Nations Food and Agricultural Organization (FAO) in combating IUU fishing, including the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU);]

ARTICLE 1: DEFINITIONS

For the purpose of this [instrument],

"[fishing] vessel" means any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for [commercial] fishing or fishing related activities [at sea] [and/or the definition for fishing vessel as applied in a Member's national laws];

"fishing" means [any activity, other than scientific research conducted by a scientific research vessel, that involves the catching, taking, or harvesting of [commercial living marine resources including] fish[, molluscs [and] crustaceans] [and aquatic plants]; or any attempt to do so; or any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish [and any operations at sea in support of it].] [searching for, attracting, locating, catching, taking [or harvesting] [commercial living marine resources including] fish[, molluscs [and] crustaceans] [and aquatic plants] or any activity which can reasonably be expected to result in the attracting, locating, catching, taking [or harvesting of] fish [and shall be confined to wild marine [capture] [fishing]]];

"[fishing [related] activities]" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing [of fish at sea], transshipping or transporting of fish [that have not been previously landed at port], as well as the provisioning of personnel, fuel, gear and [other supplies] [at sea [except research activities]] [for the purpose of fishing];]

["operator" includes any person or enterprise involved in the operation, management or ownership of a [fishing] vessel;] ["operator" means any person or enterprise that owns or controls the operation or [management] of a [fishing] vessel];

"Illegal, unreported and unregulated fishing (IUU)" [has the same meaning as] [shall be interpreted in accordance with the definition set out in] paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organization (FAO) [2001] [, as well as any modifications to, or replacements of, this instrument,] [shall be defined in accordance with Annex I of this instrument [and as implemented under national laws and regulations]. National and RFMO IUU lists, established in accordance with due process mechanisms, may be taken into account];

"overfished stock" [is where [the biomass of] a fish stock is at such a low level that mortality from fishing needs to be [restricted] [adjusted] to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the [best] scientific evidence available] [to the Member within its jurisdiction or to the relevant RFMO [within its convention area] [by the RFMO in consultation with the Member]]. In the cases of straddling and highly migratory fish stocks, shared among Members, the evaluation related to the fish stocks in the fishery for which the subsidy is provided shall be made pursuant cooperation [and agreement] of the Members involved];

[As] [Fish stocks that are] [in an overfished condition are those] recognized as [such] overfished by the [national authorities of the Member] [national jurisdiction where the fishing is taking place] or by a relevant Regional Fisheries Management Organization [or Arrangement] [within its convention area] [and in consultation with the Member] [based on best scientific evidence available to them;] [shall also be considered overfished];]

["subsistence fishing" means fishing activities undertaken by an individual household for consumption by the members of that household and kin of the fishers as opposed to fishing activities undertaken for commercial purposes. Nevertheless, part of the fish caught can be sold or exchanged for other goods or services;]

["artisanal fisheries" shall be defined as those which operate within its territorial waters and mostly close to shore, use vessels which utilize primarily manual gear, and operated by individual fishermen or family members [for the purpose of subsistence or local trade];]

["small-scale fisheries" activities shall be defined as fishing activities which use vessels that are below [24 meters] in length [and/or [x] tonnage,] [provided the said limit is codified either *in toto* or in essence in the national laws or regulations of a Member at the time of adoption of this instrument]. [The size limitation refers to Harmonized definition in Conservation Management Measures (CMM) IOTC, concerning authorized fishing vessel, April 2016];]

["small-scale [and] artisanal] [fishers"] [fisheries"] ["[semi-industrial, commercial, or] subsistence fishing"] [should be interpreted and applied] [shall be defined] [in accordance with the [existing] laws and [/or] regulations] [of a Member at the time of adoption of this instrument]] [of the Member concerned] [and the international agreements] [to which the Members are party.] [entered into by the coastal State,] [taking into account the "Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication" of the FAO (the SSF Guidelines)]

["large-scale industrial fishing" means fishing that is not semi-industrial, small-scale commercial, artisanal, or subsistence fishing [, in accordance with national laws and regulations];]

["inland fisheries" refers to fisheries carried out in freshwater or estuaries of a Member [as defined by the national laws and regulations] [and whose target species are those that spend all of their life-cycle therein] [or marine lagoons located inside the territory of a Member and/or connected to the points into sea];]

["aquaculture" means the farming of aquatic organisms, including fish, molluscs [and] crustaceans, [and aquatic plants] [as defined by the national laws and regulations] [provided that no capture fisheries are used to feed raised fish];]

["exclusive economic zone (EEZ)" [is] [shall be] defined [by principles] [according to principles] [found in Part V of the United Nations Convention on the Law of the Sea. Where any Member is not party to UNCLOS, similar principles on the exclusive economic zone adopted in domestic legislation may apply];]

ARTICLE 2: SCOPE

2.1 [The instrument provides specific provisions regarding fisheries subsidies [and it is an integral part of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)].]

2.2 This instrument applies [exclusively] to subsidies within the meaning of Article 1.1 of the SCM Agreement [that are specific within the meaning of Article 2 of that Agreement], to [vessels [, operators] [, fishing or fishing [related] activities] [at sea]] and shall be [confined][applicable] to subsidies to [wild marine [capture][fishing [or fishing [related] activities [at sea]]^[1]][fisheries]. [Notwithstanding the scope of subsidies under Article 1.1 and Article 1.2 of the SCM Agreement, this instrument also covers other nature of subsidies or incentives benefiting fishing activities.]

2.3 [For the purpose of this instrument, a subsidy shall be attributable to the Member granting it, regardless of the flag of the vessel involved [benefitting from the subsidy] [or the application of rules of origin to the fish involved.]]

2.4 This instrument shall not apply to:

- (a) [subsidies for aquaculture],
- (b) [fuel [subsidies] [de-taxation schemes]],
- (c) [subsidies for inland fisheries],
- (d) [subsidies for recreational fishing],
- (e) Subsidies for [natural] disaster relief [,provided that the subsidies are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery,] [and/or the affected fleet to its pre-disaster state²],
- (f) [Subsidies for safety, research and development, and sustainability of stocks, [promoting sustainable fisheries] the acquisition and installation of equipment for vessel and crew safety, [including for their sanitary compliance] the adoption of techniques or technology aimed at reducing the environmental impact of wild marine capture (such as by catch reduction or turtle excluder devices) or for improving compliance with fisheries management regimes aimed at sustainable use and conservation (such as devices for vessel monitoring systems); and for increasing resilience or reducing vulnerability to climate change],
- (g) [Subsidies for the installation of equipment for safety or for control and enforcement purposes, and equipment fitted for the purpose of reducing environmentally harmful emissions],
- (h) [Subsidies directly resulting from agreements between WTO Members in which one party grants access to its exclusive economic zone to fishing vessels of another party].

2.5 [This instrument shall not [affect the claims][apply to matters] concerning disputed waters [or zones] of a Member] [[have] [be interpreted as having] legal implications regarding territoriality[, sovereignty] or delimitation of maritime jurisdictions.]] [Nothing in the reports of panels or the Appellate Body in dispute settlement proceedings involving the interpretation and application of the disciplines set out in Article 3 of this instrument shall have any legal or prejudicial implications regarding territoriality or delimitation of maritime jurisdiction of Members. The positions taken by Members in dispute settlement proceedings involving these provisions are without prejudice to the positions taken by them in proceedings in other fora regarding territoriality or delimitation of maritime jurisdiction. [Any alleged [unsubsidized] IUU fishing activity involving disputes concerning

¹ For fishing related activities, if an operator owns more than one vessel, the provisions of this instrument will apply only to the vessel that has benefited from the subsidy.]

² [This provision shall not apply to Article 3.2.]

territoriality, sovereignty or maritime jurisdiction shall be excluded from the scope of this instrument and shall not constitute IUU fishing under this instrument.]]

2.6 [Any list of IUU fishing vessels, fish-stock assessment report or any technical report issued by a regional fisheries management organization shall only have effects for the purposes of the present instrument and its clauses and shall have no legal implications over territorial disputes or delimitation of maritime jurisdictions, or be interpreted as a change in the position of the parties involved in such disputes with regard to sovereignty or maritime jurisdiction, and cannot be invoked as recognition of such organizations on disputed areas.]

2.7 [Except as otherwise provided in this instrument, a Member does not thereby become bound by measures or decisions of, or recognize, any regional fisheries management organization of which it is not a Party.]

2.8 [Except for disciplines regarding IUU fishing, [and as otherwise provided in this instrument] in waters under national jurisdiction [in the EEZ] of a Member, disciplines of this instrument shall not be construed or applied in a manner that would prevent Members from applying measures to ensure small-scale [and] artisanal fishers [fishers which are not conducting large-scale industrial fishing] to access [or that would prevent small-scale [and] artisanal fishers from accessing] marine resources and markets, provided that their fisheries have a fisheries management³ system, adapted as necessary to their particular situation, in the light of their respective capacities.]

2.9 [Nothing in this instrument shall be construed or applied in a manner which will affect the rights of landlocked country Members under public international law.]

2.10 [Nothing in this instrument shall be construed or applied in a manner which will affect the rights of any Member when it is not part of some international treaties mentioned in this instrument.]

³ Fisheries management shall be defined and implemented in accordance to national legislation, taking into account the FAO Code of Conduct for Responsible Fisheries.

ARTICLE 3: PROHIBITED SUBSIDIES

3.1 No Member shall grant or maintain any of the subsidies set out in paragraphs 2, 3, 4, 7 and 8 within the meaning of Article 1.1 of the SCM Agreement [that are specific within the meaning of Article 2 of that Agreement] [to vessels, operators], [fishing or fishing activities].

Illegal, Unreported and Unregulated (IUU) fishing

3.2 Subsidies [provided to] [granted to] a fishing [vessel, [regardless of the flag of the vessel involved,] or operator] engaged in IUU fishing,

[**ALT1:** including those]

[**ALT2:** [as] [while]]

[identified by,] determined by, or listed in an IUU fishing list⁴ of:

- (a) a Member in respect of vessels flying its flag [in accordance with its law] [in accordance with its domestic laws, regulations and administrative procedures]. [When the flag Member and the subsidizing Member are not the same, the fishing vessel concerned shall be notified to the subsidizing Member, and [the determination shall be] verified by the subsidizing Member [in accordance with its law.] [in accordance with its domestic laws, regulations and administrative procedures.]
- (b) a subsidizing Member [in accordance with its domestic laws, regulations and administrative procedures].
- (c) a Member in respect of foreign-flagged vessels found fishing in waters under its jurisdiction. In this case, a subsidizing Member shall, upon request by that Member [or on its own initiative,] [recognize] [take into account, as appropriate] this determination provided that the subsidizing Member promptly [verifies] [the determination] [determines], [in accordance with its law] [in accordance with its domestic laws, regulations and administrative procedures], [and] that the [relevant] international law and principles of non-discrimination, due process, [including a procedure for appeal or review,] and transparency were respected in making that determination.

ALT: a Member in respect of foreign-flagged vessels fishing in its waters, provided that the subsidizing Member promptly [verifies] [determines], [in accordance with its law] [in accordance with its domestic laws, regulations and administrative procedures], that the Member followed fair, transparent, and non-discriminatory procedures and acted in conformity with [international law] in making its determination [based on positive evidence].

- (d) a Regional Fisheries Management Organization [or Arrangement] [including those organizations [or arrangements] of which Members are not Party], provided that the subsidizing Member promptly [investigates and] [verifies] [determines], [in accordance with its law] [in accordance with its domestic laws, regulations and administrative procedures], that the [vessel/operator] concerned has been listed [based on positive evidence] in accordance with the rules and procedures of that organization [or arrangement] [including a procedure for appeal or review] and in conformity with international law applicable to the subsidizing Member and those organizations [or arrangements] are in conformity with [FAO IPOA-IUU,] principles of non-discrimination, openness to all WTO Members, due process and transparency. [Provided, however, that in the case of fishing in waters under the national jurisdiction of a subsidizing Member, such determinations shall be made by the national authority of the subsidizing Member.]⁵

⁴ For the purposes of paragraphs (a) and (b), each Member maintains the right to determine what constitutes such [identification,] determination, or listing of IUU fishing [based on paragraph 3 of IPOA-IUU].

⁵ [For the purpose of this instrument, Regional Fisheries Management Organizations shall be recognized by the FAO before XX-XX-201X, and incorporated as Annex X of this instrument.]

[ALT: a Regional Fisheries Management Organization [or Arrangement] in accordance with the rules and procedures of that organization [or arrangement] and in conformity with international law.] [including verification mechanisms to enable Members that are not a party to those organizations [or arrangements] to engage in the listing process under the rules of procedure] [; and, if the subsidizing Member is not a party to a Regional Fisheries Management Organization [or Arrangement], provided that [it promptly verifies that] that organization [or arrangement] is in conformity with [FAO IPOA-IUU,] principles of non-discrimination, openness to all WTO Members, due process and transparency.]

- (e) [the FAO [subject to its recognition by the SCM committee.]]

Overfished Discipline (to replace 3.6-3.9)

3.3 Subsidies for fishing [and fishing related activities] [outside the territorial sea] [of] / [that negatively affect] [targeted] fish stocks that are in an overfished condition.

3.3.1 [The negative effect of such subsidies shall be determined] [by the subsidizing Member] based on the [best] scientific evidence [available to] [recognized by] [that Member.] [This determination shall take into account the implementation of management measures designed to rebuild the concerned stocks, adapted as necessary to the particular situation of the fisheries in question.]

3.3.2 [A fish stock is overfished if

[**A** it has not been assessed or has been assessed to be in an overfished condition.]

[Members shall exercise due restraint when granting subsidies to vessels or operators that target unassessed stocks. Any Member can challenge a subsidy granted to vessels or operators that target unassessed stocks if it provides positive evidence that an unassessed stock is overfished.]

[**B ALT1:** it is recognized as such by the Member in whose [national jurisdiction] [EEZ] the fishing is taking place or by a Regional Fisheries Management Organization [or Arrangement] based on [best] scientific evidence available to [and recognized by] them.]

[**B ALT2:** the stock is at such a low level that mortality from fishing needs to be [restricted] to allow the stock to rebuild to a level that produces maximum sustainable yield or [alternative] reference points based on the [best] scientific evidence [available]. Fish stocks that are recognized as overfished by the national jurisdiction where the fishing is taking place or by a relevant fisheries management organization [or arrangement] shall also be considered overfished.]

[**B ALT2bis:** the stock is at such a low level that mortality from fishing needs to be [restricted] to allow the stock to rebuild to a level that produces maximum sustainable yield or [alternative] reference points based on the [best] scientific evidence [available] and with no effective management plan in place. Fish stocks that are recognized as overfished by the national jurisdiction where the fishing is taking place or by a relevant fisheries management organization [or arrangement] shall be considered overfished.]

[**B ALT3:** the stock is at such a low level that mortality from fishing needs to be [restricted] to allow the stock to rebuild to a level that produces maximum sustainable yield or [alternative] reference points based on the [best] scientific evidence available [to the Member within its jurisdiction or to the relevant RFMO [or Arrangement]], [as recognized by the national jurisdiction where the fishing is taking place or by the relevant fisheries management organization [or arrangement].]]

[The determination by an RFMO [or Arrangement], shall be made after examination of the objections, if any, of the Member concerned].

[In the cases of straddling and highly migratory fish stocks, shared among Members, the evaluation related to the fish stocks in the fishery for which the subsidy is provided shall be made pursuant cooperation of the Members involved.]

C ALT 1 [In the absence of sufficient data to make such a determination, the stock shall be presumed to be in an overfished condition.]

C ALT 2 [In the absence of scientific evidence to make such a determination due to a lack of capacity, this paragraph does not apply until the Member acquires the capacity to conduct stock assessments.]

3.4. [Subsidies [to vessels or operators fishing] [in connection with fishing and fishing related activities] in areas beyond national jurisdictions which are not aimed to fulfill a quota or a right established by a RFMO [or Arrangement].]

3.4 ALT [Subsidies [to vessels or operators fishing] [in connection with fishing and fishing related activities] in areas beyond national jurisdictions which are not aimed to fulfill a quota or a right established by a RFMO [or Arrangement] and which negatively affect targeted fish stocks that are in an overfished condition].

3.5 [Notwithstanding the provisions of Article 3.x, above, nothing in this instrument shall be construed to prohibit subsidies to fishing vessels, fishing or fishing activity in respect of fish stocks that are not overfished, provided that other fish stocks in an overfished condition situated in the same [geographical area/jurisdiction] are not targeted.]

3.6. [Illustrative list of subsidies that do not negatively affect targeted fish stocks that are in an overfished condition:

- (a) subsidies that improve fishery management systems and [thus] promote sustainable fisheries including subsidies for research and development activities;
- (b) subsidies that improve hygiene, health, safety and working conditions for fishers;
- (c) subsidies aiming at improving the concerned Member's capacity to fight against IUU fishing;
- (d) subsidies for [permanent] cessation of fishing activities provided that the fishers [or fishing vessels] concerned effectively cease all fishing activities within a reasonable timeframe after receiving the subsidy concerned.]
- (e) [subsidy programmes of Members aimed to fulfill a quota or a right established by a RFMO]

[Overcapacity] [Capacity enhancing subsidies]⁶ and Overfishing [to replace 3.10-3.15 of the room document]

3.7 Subsidies:

- (a) [that increase [or allow to be maintained] the [marine fishing capacity] of [a fishing vessel] [or a fishing fleet of vessels][the total marine fishing capacity of the whole fishing fleet of vessels of a Member] [including fleet renewal programmes];]
- (b) [that support the acquisition of [machines and] equipment for fishing vessels [(including fishing gear and engine, fish-processing machinery, fish-finding technology, [refrigerators,] [or] machine for sorting or cleaning fish)] [or any other equipment

⁶ [Disciplines related to overcapacity shall be limited to areas beyond national jurisdiction and shall not cover subsidy programs of Members aimed to fulfill a quota or a right established by a RFMO.]

- on-board the fishing vessel] that increases [or maintains] the ability of [a fishing vessel][or a fishing fleet of vessels] to find fish;]
- (c) [that support the [construction,] [acquisition] [modernization, renovation, modification, repair, upgrading] [renewal,] of [existing] fishing vessels;]
 - (d) [that support the importation or transfer of fishing vessels] [including through the creation of joint ventures with partners of those countries;]
 - (e) [within the meaning of Art. 1.1 of the SCM Agreement, for provision or use of fuel or schemes which can reasonably be expected to result in the provision or use of fuel, which benefit the fisheries sector.]
 - (f) for [operational costs to fishing vessels and fishing related activities] [, including] licence fees or similar charges, fuel, ice, bait, personnel, income support, price support, social charges, insurance, and at-sea support; or operating losses of such vessels or activities.
 - (g) [that enhance the capacity of large scale industrial fishing activities outside of the subsidizing Member's maritime jurisdiction.]

3.8 [Subsidies [to vessels or operators fishing] [in connection with fishing and fishing related activities] in areas beyond national jurisdictions which are not aimed to fulfill a quota or a right established by a RFMO] [and which negatively affect targeted fish stocks that are in an overfished condition].]

3.8 ALT [Subsidies [to vessels or operators fishing] [in connection with fishing or fishing related activities] in areas beyond the national jurisdiction of the subsidizing Member;] [and which negatively affect targeted fish stocks that are in an overfished condition.]

3.9 [Notwithstanding the provisions of Article 3.x, above, nothing in this instrument shall be construed to prohibit subsidies to fishing vessels, fishing or fishing activity in respect of fish stocks that are not overfished, provided that other fish stocks in an overfished condition situated in the same [geographical area/jurisdiction] are not targeted.]

[Prohibited Subsidies – Other Provisions]

3.10 [A Member shall not provide subsidies to fishing and related activities in waters and areas that are claimed by more than one Member at the time of this Decision, unless the Members involved have agreed *inter se* to do so through a joint notification to the WTO. For purposes of this provision, the Members shall cease from providing subsidies not later than [2020].]

Note regarding placement and titling of Article 3.10: Placement and titling of this provision are for ease of understanding and are without prejudice to the proper placement and titling, the position of any Member, or the outcome.

[ARTICLE 4: STANDSTILL

In relation to subsidies that are not prohibited by Article 3, each Member shall refrain from introducing new, or extending or enhancing existing, subsidies within the meaning of Article 1.1 of the SCM Agreement, to the extent they are specific within the meaning of Article 2 of the SCM Agreement, that contribute to overfishing or overcapacity.]

ARTICLE 5: SPECIAL AND DIFFERENTIAL TREATMENT

Transitional Arrangements

5.1 [No Member shall be obliged to apply Article 3 of this instrument before the expiry of a period of one year after entry into force of this instrument. [A Member may grant or maintain subsidies set out in [Article 3.7⁷] during a transitional period of [X] years following the entry into force of this instrument, provided that the vessel benefitting from the subsidy does not target fish stocks that are in an overfished condition.⁸] [Existing subsidy programmes which are inconsistent with Article 3 shall be brought into conformity by 2020.]

5.2 [Developed Members shall not be obliged to apply Article 3 of this instrument before the expiry of a period of [x] year[s] after entry into force of this instrument.] [Developing countries are entitled to a [further] delay of [x] years, and LDCs are entitled to a [further] [x] years [a] delay of [x]years, after entry into force of this instrument.] [In the case of LDCs having graduated from LDC status before the entry into force or during the transition period, these Members are entitled to utilise the remaining period of delay provided for LDCs.]

5.3 [A Member may grant or maintain subsidies set out in Article 3.7 during a transitional period of [X] years following the entry into force of this instrument, provided that the vessel benefitting from the subsidy does not target fish stocks that are in an overfished condition.]

Special and Differential Treatment

LDCs

5.4 [Prohibitions other than those outlined in Articles 3.2 and 3.3 above shall not apply to LDC Members.]

Unreported and Unregulated Fishing

5.5 [With respect to Article 3.2, in order to establish measures against unreported and unregulated fishing, after the period stipulated in Article 5.2, developing countries [except for their] [not engaged in] large scale industrial distant-water fishing are entitled to apply [x] additional years [year] and LDCs [x] additional years of transition period, [except for illegal fishing] [to enable them to establish reporting mechanism and regulations through implementing Article 5.15]. [In the case of LDCs having graduated from LDC status before the entry into force or during the transition period, these Members are entitled to utilise the remaining period of delay provided for LDCs.]]

5.5*bis* [Developing Members and LDCs declaring difficulties on small scale, artisanal and/or subsistence fishing shall have [X] years of transition period in implementing the disciplines related to unreported and unregulated aspects of such small scale, artisanal and/or subsistence fishing under Article 3.2.]

5.5*bis*.1 For developing Members and LDCs making such declaration as set out in Article 5.5*bis*, if it receives the notification from a relevant flag Member or RFMO that its vessel is engaged in unreported or unregulated fishing, and if the unreported or unregulated fishing activity concerned has been determined in accordance with Article 3.2, the developing Member or LDC concerned shall endeavor to implement Article 3.2.]

5.5*ter* [The prohibition under Article 3.2 in respect of unreported and unregulated fishing shall not apply to developing countries including LDCs for fishing activities:

- (a) In waters under the jurisdiction, including in the EEZ, of the subsidizing Member; and

⁷ [Capacity-enhancing subsidies].

⁸ As recognised as overfished by the national authorities of a Member or by the relevant Regional Fisheries Management Organisation or Arrangement. In the absence of sufficient data to make such a determination, the stock shall be presumed to be in an overfished condition.

- (b) In areas beyond the EEZ of such Member, for a transitional period of [X] years from the date of entry into force of the instrument.]

Overfished Stocks Prohibitions

5.6 [Article 3.3 shall not apply to fishing occurring within [their territorial waters] [the EEZ] of developing countries and LDCs. [In respect of fishing activities in high seas beyond the EEZ, such Members shall be entitled to a period of [X] years, after entry into force of this instrument, to withdraw any subsidy for fish stocks that have been identified, based on positive evidence, as being in an overfished condition by an RFMO of which such developing country is a Member.]]

Overfishing and Overcapacity

5.7 [Nothing in Article 3.7 shall prevent a developing country Member from maintaining or granting subsidies to the following activities conducted in accordance with the principle of protection and preservation of fisheries resources defined under Article 61 and 62 of the United Nations Conference on the Law of the Sea Treaty (UNCLOS):] [or where any Member is not party to UNCLOS, similar principles on protection and preservation of fisheries resources adopted in domestic legislation may apply:]

5.8 [Notwithstanding the provisions of Article 3.7 regarding overfishing, overcapacity, and capacity enhancing subsidies, developing countries and LDCs shall be allowed to provide subsidies for;] [Except for the prohibited subsidies related to IUU Fishing, developing and least developed countries' members shall be allowed to grant or maintain fisheries subsidies to their:]

- (a) [subsistence fishing⁹;
- (b) [artisanal fisheries¹⁰ activities;]
- (c) [Fishing activities related exclusively to artisanal and small scale fisheries¹¹ or the subsistence and livelihood of the fishermen and their families;]
- (d) [small-scale fisheries activities¹²;
- (e) [Fishing activities, which exclusively exploit fish stocks within the economic exclusive zone (EEZ)¹³ of the Member granting the subsidy;] [fishing and fishing activity within their own EEZ¹⁴;
- (f) [Fishing or fishing related activities provided that the purpose is to exploit underexploited resources in the member's own Economic Exclusive Zone; and
- (g) Fishing or fishing related activities provided that the purpose is to exploit rights held by the member in high seas fishing quotas or any other rights established by a RFMO(s)/A(s)]

⁹ The term "subsistence fishing" refers to fishing activities undertaken by an individual household for consumption by the members of that household and kin of the fishers as opposed to fishing activities undertaken for commercial purposes. Nevertheless, part of the fish caught can be sold or exchanged for other goods or services.

¹⁰ For the purposes of this discipline, artisanal fisheries shall be defined as those which operate within its territorial waters and mostly close to shore, use vessels which utilize primarily manual gear, and operated by individual fishermen or family members for the purpose of subsistence or local trade

¹¹ For the purpose of this instrument "artisanal and small scale fisheries" shall be defined in accordance with national laws and regulations and the international agreements entered into by the coastal State, taking into account the "Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication" of the FAO (The SSF Guidelines).

¹² For the purposes of this discipline, small-scale fisheries activities shall be defined as fishing activities which using vessels that are below [24 meters in length. The size limitation refers to Harmonized definition in Conservation Management Measures (CMM) IOTC, concerning authorized fishing vessel, April 2016.]

¹³ For the purpose of this instrument "exclusive economic zone (EEZ)" shall be defined according to principles found in Part V of the United Nations Convention on the Law of the Sea. Where any Member is not party to UNCLOS, similar principles on the exclusive economic zone adopted in domestic legislation may apply.

¹⁴ [Noting the rights, jurisdiction, and duties of coastal states among others, found under UNCLOS Part V.]

5.9 [Developing and least developed countries may grant or maintain subsidies referred to under Article 3.7 if the following conditions are met:

- (a) the vessel benefitting from the subsidy does not target fish stocks that are in an overfished condition; and
- (b) the targeted stocks are managed on the basis of the best available science at the disposal of the concerned Member, consistent with the conservation and cooperation obligations under the relevant international law, as reflected in UNCLOS, conservation and management measures of competent RFMO(s)/A(s), and generally accepted standards for the conservation and management of fisheries resources; and
- (c) the subsidizing Member has a management plan for the fleet segment it intends to subsidize.]

[The flexibility set out above shall be reviewed in view of the objectives set out in UN Sustainable Development Goal 14.4 and 14.6 at the end of the 10th year following the entry into force of this instrument.]

5.10 [Fisheries subsidies which are not covered as subsidies to artisanal fisheries activities, shall be contingent on the following:

- (a) the member has a fishery management plan in place that is effectively monitored and adequately enforced;
- (b) the fisheries do not adversely affect resources governed by the fisheries management plan;
- (c) the fishing activities will not adversely affect fishery resources of other members or the resources governed by relevant regional fisheries management organizations (RFMOs); and
- (d) the member has control mechanism on fisheries subsidies to avoid overfishing and overcapacity.]

5.11 In order to bring any subsidy programs into conformity with the obligations provided in this provision, developing and least-developed country Members, that at [the time of entry into force/adoption] of this instrument, have not completed; or, need to update the information related to the status of the fish stocks in the fishery for which the subsidy is provided, shall be granted with a period of time of [X] and [Y] years, respectively, after entry into force, subject to comply with the transparency section provided below in Article 6.X.

5.12 [Developing countries ranking among the world's [X] biggest in terms of marine capture production as determined by the FAO shall endeavour to refrain from making use of the flexibilities set out in Article 5.9.]

5.13 In the case of developing country Members, [Article 3.7] shall only apply to [their large scale industrial fishing and] fishing activity outside of their own EEZ.¹⁵

5.14 Prohibitions for capacity enhancing/overcapacity subsidies shall not apply to small and vulnerable economies.¹⁶

¹⁵ [Noting the rights, jurisdiction, and duties of coastal states among others, found under UNCLOS Part V.]

¹⁶ [For the purpose of this paragraph a small and vulnerable economy shall be defined as a Member whose share of global total of wild marine capture for years 2013 to 2015 is not more than XX percent.]

Technical Assistance and Capacity Building

5.15 [Upon request of a developing country or LDC Member] [and with reference to guidance provided by the UN Fish Stocks Agreement,] [Developed countries], [and developing countries in a position to do so] shall provide, [and relevant agencies are invited to provide,] targeted technical assistance and capacity building [assistance] [on mutually agreed terms and conditions] to developing countries, in particular LDCs and small, vulnerable economies (SVEs) to:

- (a) address institutional and financial difficulties faced by LDCs and developing countries [with constraints to implement this instrument] [countries in the implementation of this instrument];
- (b) establish reporting mechanisms and regulations to prevent unreported and unregulated fishing;
- (c) to allow them to participate fully in any RFMO adjacent to their exclusive economic zone or archipelagic waters;
- (d) to develop the capacity to initiate, implement, and enforce compliance with a fishery management plan in keeping with the FAO Code of Conduct on Responsible Fisheries and adequate to provide the showing required by Articles 5.8 (d) and 5.8 (f) and (g) of this instrument;
- (e) conduct stock assessments;
- (f) conduct monitoring, control and surveillance of fish stocks; and
- (g) research and development]]

5.15**bis** [Developed country Members shall endeavour to provide targeted technical assistance and capacity building for conducting stock assessment to developing country and LDC Members.]

5.15**ter** [Technical and financial assistance and support for capacity building shall be provided to help developing and least-developed country Members acquire the necessary infrastructure and technical capacity for the conduct of effective stock assessments within their jurisdictions. The extent and the timing of implementation of Article 3.3 (prohibition of subsidies in overfished stocks) shall be related to the implementation capacities of developing and least-developed country Members. Where a developing or least-developed country Member continues to lack the necessary capacity, it will not be required to comply with the provisions of Article 3.3 (prohibition of subsidies in overfished areas) until effective implementation capacity has been acquired.]

5.16 [Members agree to implement an effective scheme of cooperation to help developing and least-developed country Members to acquire capacity building in the form of technical assistance in order to fulfill their commitments. This scheme could include bilateral and regional cooperation as well as technical assistance from relevant international organizations.]

5.17 The provision of technical cooperation and capacity building under this instrument will be notified by providing Members and reviewed in the SCM Committee. The WTO shall cooperate with FAO and UNCTAD in the provision of technical assistance under this Article.

5.18 [The operationalization of disciplines on fisheries subsidies should not impede the ability developing countries and LDCs to develop and diversify their fisheries sector.]

Transparency

5.19 [Notification requirements shall not be burdensome on developing countries with capacity constraints, especially LDCs.]

5.20 [The notification requirements referred to under Article 6 shall not apply to LDC Members.]

ARTICLE 6: NOTIFICATION AND [TRANSPARENCY] [SURVEILLANCE]

6.1 Each Member shall provide the following information [as part of] [in addition to] its regular notifications [of fisheries subsidies] under Article 25.3 of the SCM Agreement [to the extent that a Member is providing subsidies prohibited under Article 3 of this instrument]:

- (a) [programme name, legal basis, and granting authority for the programme];
- (b) [level and type] [amount and nature] of support provided;
- (c) [type or kind of marine fishing activity that the programme supports];
- (d) [vessels and operators fishing in areas beyond national jurisdiction, for which the subsidy is granted];
- (e) [name of the recipient and, where known, name and identification number of the fishing vessel];
- (f) [catch data [by species] in the fishery for which the subsidy is provided];
- (g) [status of the fish stocks in the fishery for which the subsidy is provided (i.e., overfished, fully fished, or underfished)];
- (h) [fleet capacity in the fishery for which the subsidy is provided];
- (i) [conservation and management measures in place for the [relevant] fish stock [for which the subsidy is provided]] [as well as any relevant fishing capacity management plans]; and
- (j) [total [imports and] exports [per species] [for which the subsidy is provided]].

[Each Member shall [endeavor to] provide the information set out in subparagraphs [(c)][(d)][(f)] through (j) [to the extent possible][where available] [where relevant, and to the extent practicable].]

6.2 [Each Member [shall][may] also provide, [to the extent possible,] information in relation to other subsidies that the Member provides to [[persons engaged in] fishing [or fishing-related activities]] [the fisheries sector] that are not covered by Article 6.1, in particular [aquaculture and] [fuel subsidies].]

6.2 ALT [Notwithstanding [Article 2.2] / [Article 3.1] of this instrument, Members shall notify the information referred to in Article 6.1 with respect to non-specific subsidies for the provision or use of fuel or for schemes that can reasonably be expected to result in the provision or use of fuel, which benefit the fisheries sector.]

6.3 [Nothing in this notification provision requires the provision of confidential information, including confidential business [and/or scientific] information.]

6.4 [Each Member shall provide to the SCM Committee, within [one year] of the date of entry into force of this instrument, a notification describing how it has implemented the prohibitions set out in Article 3. Each Member shall periodically update its notification in accordance with guidance to be established by the SCM Committee.]

6.5 [Each [subsidizing] Member shall notify the SCM Committee on an [annual basis] of any list of vessels [and operators] that it has [identified] [determined] as having engaged in IUU fishing.]

6.6 [In order to enable the effective surveillance of subsidies elimination established in Article 3.2 the SCM Committee shall, upon receipt, circulate communications from:

- (a) RFMOs [¹⁷] informing a determination finding that a vessel or operator has engaged in IUU fishing activities in waters covered by such organization, and;
- (b) Members informing a determination finding that a vessel of a third country flag state has engaged in IUU fishing activities within waters under the national jurisdiction of the Member making the determination.]

6.X [Place-holder]

¹⁷ [For the purpose of this instrument, Regional Fisheries Management Organizations shall be recognized by the FAO before XX-XX-201X, and incorporated as Annex X of this instrument.]

ARTICLE 7 [TRANSITIONAL PROVISIONS]

[No Member shall extend the scope of [any such programme] [a programme inconsistent with this instrument], nor shall such a programme be renewed upon its expiry].

ARTICLE 8 [INSTITUTIONAL ARRANGEMENTS]^[18]

8.1 [The SCM Committee [shall] hold a [dedicated] [biennial] [review] [special session to evaluate the] of [Members'] [progress in the] [implementation of] [this instrument], [the agreed disciplines and make recommendations for their future improvements.], [the nature and extent of Members' subsidy programmes, and the related fish stock status, production and trade]. [This review shall be supported by a WTO Secretariat report based on Members' notifications complemented by relevant information provided by Members to the Secretariat and information from other international organizations.]

8.2 [The Committee shall review the operation of this instrument after three years, and periodically thereafter.]

8.3 [The flexibility set out in Article 5.9 shall be reviewed in view of the objectives set out in UN Sustainable Development Goal 14 [target 4 and] target 6 at the end of the tenth year following the entry into force of this instrument.]

[8.4 The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific fisheries subsidies programs. The Committee shall develop a procedure to monitor the implementation of Article 3.2, in particular with the objective of achieving consistency among Members in applying the IUU prohibition.]

[8.5 The Committee shall maintain close contact with the relevant international organizations in the field of fisheries management, especially with the Food and Agriculture Organization of the United Nations (FAO), and relevant Regional Fisheries Management Organizations or Arrangements, with the objective of securing the best available scientific and technical advice for the administration of this instrument [and in order to ensure that unnecessary duplication of effort is avoided].]

[8.6 In order to avoid unnecessary duplication, the Committee may decide to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations [in consultation with those Members having the information to be used].]

[8.7 The Committee may invite experts from the relevant [national, regional and] international organizations [including research and academic institutions] to examine specific matters with respect to a particular guidelines, recommendations or decision. [The opinion of these experts is for reference only and not to be used as a legal document in a dispute settlement process.]]

[8.8 For the purpose of this instrument, the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to any measure or situation having relevance to any [issue of] [dispute or claim involving] territoriality, sovereignty or maritime jurisdiction [if so decided by the Dispute Settlement Body or by a Ministerial Conference by consensus].

8.8.1 Whenever any Member claims that there is a dispute under this instrument having any relevance to territoriality, sovereignty or maritime jurisdiction, the dispute proceeding concerned shall be automatically terminated immediately, [if so decided by the Dispute Settlement Body by consensus] [unless the DSB decides by consensus otherwise].

^[18] The "claim/s" or "dispute/s" involving territoriality, maritime jurisdiction, sovereignty and related issues over a specific fishing area referred to under Article 2 and Article 8 of this instrument refers to the outstanding disputes or claims between and among WTO Members filed in and within the jurisdiction of either of the following: (a) the International Tribunal for the Law of the sea; (b) the International Court of Justice; (c) and arbitral tribunal constituted in accordance with Annex VIII of UNCLOS; or (d) a special arbitral tribunal constituted in accordance with Annex VIII of UNCLOS".]

8.8.2 [If so decided by a Ministerial Conference by consensus,] Articles 8.8 and 8.8.1 shall be an integral part of the Understanding on Rules and Procedures Governing the Settlement of Disputes[.] [and] [T][t]his instrument shall not enter into force unless Articles 8.8 and 8.8.1 are incorporated into Appendix 2 Special or Additional Rules and Procedures Contained in the Covered Agreements of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

8.9 In order to [combat][address subsidies that contribute to] IUU fishing, the WTO is encouraged to increase its cooperation with the FAO and RFMOs [and other arrangements].]

[8.10 WTO Members are encouraged to consider establishing [hotline] [open direct communication] and cooperation agreements to prevent and deal with IUU fishing based on the principles of the UNCLOS 1982.]

[ANNEX I

- A. Illegal fishing refers to activities:
- i. conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
 - ii. conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
 - iii. in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.
- B. Unreported fishing refers to fishing activities:
- i. which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
 - ii. undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.
- C. Unregulated fishing refers to fishing activities:
- i. in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
 - ii. in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.
- D. Notwithstanding paragraph C, certain unregulated fishing may take place in a manner which is not in violation of applicable international law.]

ANNEX X LIST OF RFMOS

Place-holder
