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REVISED DRAFT TEXT

CHAIR'S EXPLANATORY NOTE ACCOMPANYING TN/RL/W/276/REV.2

Addendum

The attached document is the Chair's explanatory note accompanying the revised fisheries subsidies draft negotiating text circulated in TN/RL/W/276/Rev.2. The content of the explanatory note was delivered orally by the Chair when he presented the text at the 8 November 2021 meeting of the Negotiating Group on Rules at the level of Heads of Delegation.

INTRODUCTION

1. Good morning colleagues, and welcome to this open-ended meeting of the Negotiating Group on Rules. Thank you for joining me today. As I indicated at our meeting on Friday, 29 October and in my e-mail of 4 November, the purpose of today's meeting is for me to introduce a revision of our current draft text, to be circulated in document TN/RL/W/276/Rev.2 (Rev.2), and to explain what the changes are compared to TN/RL/W/276/Rev.1 (Rev.1) and why they were made. I will also suggest how I think we should proceed in the next stage of our work. Let me also thank the Director-General, Dr. Ngozi, for taking the time to join us for this meeting.

2. As has been the case when I have introduced previous texts, my intention for today is to simply introduce the text. Following that the DG will make some remarks. I will not be opening the floor for reactions but will then close the meeting. This is to allow all of you time to digest the text before we begin to discuss its substance. To help you follow the discussion we will have the text projected on the screen. Immediately after the meeting, the Secretariat will e-mail to all delegations the unofficial room version of the text. Please note that this is not the final version as it will be circulated as the text will need final proofreading and formatting by the WTO Documents Control. Also, as has been our practice to date, following the meeting I will circulate the description of the text that I present here today as Addendum 1 to the text.

3. Before going into the details of the changes, let me briefly summarize the work that has been the basis of this revision. As you know, the work in the lead-up to the 12th Ministerial Conference (MC12) has been organized as a two-stage process:

- a first stage to address the "macro issues" identified by Ministers at the TNC meeting of 15 July with the aim of evolving the draft text, to address a perceived imbalance or imbalances, before engaging in the final stage of the negotiations; and

- a second, final stage – the clause-by-clause process – which we originally had planned to start in mid-October.

4. As you know, although our work during the period initially allotted to the first phase was productive, at the end of that period many Members informed me that their bilateral engagements with other delegations had been intensifying and that they could benefit from more time to try to bridge differences on those "macro issues". As I reported to you in our last meeting on 29 October, I therefore had suggested prolonging the first phase of the work for a few more weeks, that is, through last week.

5. For my part, as I have indicated in several e-mails and meetings, I have been meeting with delegations that requested to consult with me to discuss any issues that they wanted to raise, and I also reached out to consult with some delegations and groups on various matters. To date, I have held consultations with a wide range of delegations and groups of delegations in various formats – dozens in numbers and representing the full spectrum of views. Sometimes these meetings were held on short notice or were early in the morning or late in the evening. I would like to thank all delegations for your flexibility in this regard. I know this period before MC12 is challenging for all of us, given the number of issues and meetings that require Members' attention and participation. On my side, I have been and still am acutely aware of the limited time that remains before MC12, and of the need to maintain transparency about the process. As such, during our 29 October meeting, I asked all of you to share with the Negotiating Group on Rules any updates of the work you have been conducting with other delegations. I also urged you to send me any collective results of such work by the close of business last Wednesday, 3 November, so that I could consider this information as I worked on the revised text.

6. As you will recall, at the meeting, a wide range of delegations provided encouraging reports on work that they were conducting, and following the meeting I did receive a few communications with suggestions for amending various parts of the text. In a couple of cases these were submitted jointly by certain delegations, in others these were individual delegations' submissions that had been consulted with other Members. I also have met with a number of delegations and groups of delegations since then, to discuss specific drafting ideas and to exchange views on the way forward. The most recent of these contacts were in a series of small-group consultations that I held late last week with Members representing diverse regions and views. My conclusion based on all of this work is that much progress has been made on some of the key "macro issues".

7. My various contacts with delegations also confirmed, as I had alluded in various meetings since 15 July, that there are many different perceptions of the overall balance or lack of balance in the Rev.1 text. Initial requests for a "rebalanced" text mainly focused on the balance between Article 5.1, including Article 5.1.1 and its footnote 10, on the one hand, and the related special and differential treatment provisions, on the other hand, with wide differences of views over the nature of the perceived imbalance in these provisions. Through our discussions following the 15 July meeting, it became clear that the other major sticking point issues were also viewed by many as elements of the overall balance or perceived imbalance in the text. In other words, it became clear that all of the macro issues not only needed to be resolved on their own, but also that these issues were interlinked in various ways such that resolving one would have implications for others, technically, politically, or both. These additional issues include:

- disciplines relating to fishing in areas beyond national jurisdiction;
- notification and transparency;
- non-specific fuel subsidies;
- the subsidy prohibition in the IUU fishing pillar;
- proposals concerning the use of forced labour in fishing; and
- vessels not flying the flag of the subsidizing Member.

8. As such, in reflecting on how to address the perceived imbalance in a revision, I needed to think about all of these provisions in relation to each other. That is, the question of "balance" became about the balance in the whole text and the inherent linkages among its provisions.

9. This brings me to the main agenda for today's meeting, the revised draft text in TN/RL/W/276/Rev.2. As I have just explained, the revisions that I am putting forward are based on all of our latest collective work – that is, the work done by the Group and textual suggestions made in the Negotiating Group as a whole; and all of the Member-led work that has been undertaken by you, of which I have been made aware. This morning, I will go through the text in detail, to explain the nature of and reasons for each revision, so that when we reconvene tomorrow to begin discussing Rev.2 you will be able to have those considerations in mind.

10. Before turning to the details of the changes, I would like to outline a few key principles that I used to guide my work in preparing this revision.

11. First, addressing the broader considerations of balance. The most substantive changes to the text are precisely made to try to address the various imbalances perceived by Members with diverse perspectives. Given the number of issues involved and the wide diversity of views on all of them, the only way to find landing zones on the individual issues that will attract broad convergence is by taking into account, holistically, the technical and political interlinkages among these issues. In my consultations over the past few weeks, and in various interventions during the 29 October meeting, Members have recognized this as well.

12. As you will see shortly when I present the details of Rev.2, the biggest changes are in elements in the illegal, unreported and unregulated (IUU) fishing pillar, the overcapacity and overfishing pillar, and in notification and transparency. Therefore, when reading the revised text, it will be important that you look at these changes holistically, given that each amendment not only addresses a specific issue but also obeys to broader considerations of balance. I also would remind us to keep in mind the broader perspective of the basic reason and mandate of these negotiations. Our objective in creating new subsidies disciplines is to contribute to improving the sustainability of fisheries and ocean ecosystems, for the benefit of all people, especially those – including vulnerable individuals and groups – who depend on fisheries for their livelihood over the long term. That is, the issue of balance should be thought of not only in terms of internal balance within the text but also in terms of the balance of the disciplines taken as a whole and our sustainability-based mandate. We are all in agreement that to fulfil the mandate, we need to deliver a meaningful outcome in terms of sustainability.

13. Second, providing as "clean" a revision as possible. In July, Ministers asked for a clean text or as clean a text as possible, well ahead of MC12. They also empowered Heads of Delegation to show the flexibility and make the compromises necessary to collectively produce this text. We worked very hard during the first phase of the work this fall to address the various issues of balance so that we could have a revised text on which to base our clause-by-clause negotiations. Through that work in the Negotiating Group as a whole and in your own Member-led work we have made a lot of progress, both in generating ideas and in increasing the level of convergence around possible bridging solutions for certain main sticking points. That said, we are nearly out of time to produce the "as clean as possible" text for Ministers to consider at MC12, and not all issues have reached the same degree of maturity or convergence in the processes we have conducted so far this fall.

14. Given this, during my consultations last week I heard calls from a wide diversity of Members to produce, in my capacity as Chair, a revised text aiming to come as close as possible to the final revision that would be sent to Ministers. That is, to propose changes on the key substantive issues that, taken as a whole, could reflect an overall balance that would address the most important priorities and concerns that have been raised during our work to date. The Members' call for me to produce this kind of a revision was to put us in as good a position as possible for the clause-by-clause discussion, such that we can have a very focused discussion during the short time left before MC12. Again, for this to work, Members will need to see this text, with all of its internal interlinkages – technical and political – as a whole, as you engage in the very detailed clause-by-clause review.

15. In this regard, while it is well understood, it is worth repeating that of course nothing is agreed until everything is agreed. Thus, while the revision reflects my honest, best attempt to find a balance in a way that I consider would be most likely to build consensus, the whole point of the clause-by-clause exercise is to collectively keep improving the text to reflect greater and greater convergence. In this regard, while of course not every textual suggestion that was made since September has been copy-pasted into the revised text, all of these suggestions have informed my thinking. In particular, I have tried to find drafting that somehow addresses the major concerns underlying the various suggestions as explained by the Members presenting them. And while I have been referring to changes, the provisions that have not been changed in Rev. 2 also occupy a key place in the overall balance, and in our discussions. In particular, I wish to underscore that not suggesting changes to certain provisions in Rev.2 does not imply that these provisions are accepted or agreed. So, while today I mainly will be highlighting the changes in the new revision, we will be discussing all provisions of the text in this new phase of our work, including the parts that were not changed from the Rev.1 text.

16. Therefore, even if you may not see your own drafting formulation in a particular part of the text, I would invite each of you to consider whether the drafting that is proposed in the revision – taken as a whole – somehow addresses your concern through another route.

17. Finally and critically, for these negotiations to succeed we will need to use this text as the basis for this final phase of the negotiations. This is the text you have asked me to prepare, and again I have done my best to take into account all of the many issues and concerns that have been raised, in as balanced a way as I could find. Of course it is not possible for me to produce a perfect text. So we now need to trust the process and trust one another so that together we can refine the language in a way that will finally close this deal.

18. Concerning the specifics of the Rev.2 text. The Rev.2 text presents changes in a variety of ways, depending on the provision involved and the state of the discussions of the underlying issues. In particular, some changes are presented as clean text, and some are presented in brackets, including, in some cases, as bracketed alternatives.

19. More specifically concerning the bracketed language:

- in some cases, brackets represent alternatives;
- in some cases, they represent decisions as to whether a given piece of text should be retained or deleted, and
- in some cases, they represent issues requiring further discussion.

20. Concerning this last category, there are areas of the text that require more technical discussion before a line-by-line consideration would be productive, and I will shortly outline my suggestions for how we can engage on these issues over the next couple of weeks.

21. So, with that overall outline, let me start explaining the details of Rev.2.

ARTICLE 1

22. Let me begin with Article 1 on the scope of the instrument. The first part, Article 1.1, together with its two footnotes, has been generally acceptable to Members thus far, and remains unchanged in Rev.2.

23. Article 1.2, which would bring non-specific fuel subsidies into the scope, remains in brackets because, as you know, Members remain divided on whether this provision should be included or deleted.

24. On the question of non-specific fuel subsidies and fuel de-taxation schemes, I have of course taken careful notes of other suggestions and ideas, such as those on notification and transparency. I suggest that we address these issues through a focused discussion. I will elaborate on my specific suggestions in this regard when I come to the next steps in our process.

ARTICLE 2

25. Article 2 sets out the definitions for five terms that apply throughout the disciplines. As explained earlier, the definitions of the first four terms, in (a) through (d) for "fish", "fishing", "fishing related activities" and "vessel", were taken from the *Agreement on Port State Measures* (PSMA), and they remain unchanged.

26. For the definition of "fishing related activities" in Article 2(c), some Members have suggested moving the qualifier "at sea" to another place, with a view to clarifying that the activities are limited to those performed "at sea". However, there were some concerns about adjusting the language from the PSMA, and some thought that such a change was unnecessary given that the scope in Article 1.1 already limits "fishing related activities" to those carried out "at sea". No change was made in the current revision, but the clause-by-clause phase would be an opportunity for the interested Members to pursue this further.

27. Turning to the definition of the term "operator" in Article 2(e), Members will recall that this was taken from the facilitator's work and was initially a footnote to one of the IUU fishing provisions. Since then, given that the term "operator" is also used elsewhere, the general elements of that definition were moved to Article 2(e), whereas the more specific part addressing IUU fishing aspects was retained in its original placement in that pillar. With these changes, up through Rev.1 the definition of the term "operator" was "the owner of the vessel, or any person on board, who is in charge of or directs or controls the vessel".

28. In our recent discussions of this language, some Members have suggested broadening the term "operator" to ensure that the disciplines would not be circumvented through leasing, other arrangements or corporate structures, where someone who was not on board the vessel engaged in IUU fishing was directing and controlling it.

29. In addressing these concerns, one of the suggestions that attracted some support was to delete the qualifier "on board", so that the discipline is not limited by it. To the same end, some other Members also suggested inserting text specifying that the "person" who is an operator may either be a "natural or juridical" person. Others thought this was either not necessary, because already by deleting the phrase "on board" – in this context – the "person" could be either natural or juridical, or that adding this qualifier might inadvertently limit rather than broaden the definition.

30. With these points in mind, "on board" was deleted but the "natural or juridical" qualifier was not added. Of course, like everything else, this can be reviewed during the new phase.

31. There is also a minor change in this definition from "the vessel" to "a vessel" in the first line. This is a purely grammatical change and not meant to have any substantive implications.

ARTICLE TITLES

32. Before I turn to Article 3, let me take a moment to explain the changes made to the Article titles in Articles 3, 4 and 5. During my consultations, some Members considered that the titles to these substantive provisions could be simplified and clarified.

33. To address this, some minor changes were made to the Article titles, mainly to make them consistent with the language used for the disciplines and the mandate. To this end:

- the title of Article 3 now reads "subsidies contributing to illegal, unreported and regulated fishing";
- the title of Article 4 now reads "subsidies regarding overfished stocks"; and
- the title of Article 5 is now "subsidies contributing to overcapacity and overfishing".

34. These titles now track the language of our mandate and the respective disciplines. None of these changes are meant to be substantive; they are all purely editorial in nature.

ARTICLE 3.1

35. The next change is in Article 3.1, the subsidy prohibition in the IUU fishing pillar. In the previous versions of the text, the prohibition in the IUU fishing pillar was drafted as applying to subsidies to a vessel or operator engaged in IUU fishing, full stop. In Rev.2, this has been changed to apply also to "fishing related activities in support of such fishing".

36. As you recall, this proposal was made in May this year in TN/RL/GEN/205 and has been discussed on several occasions. In those discussions, some Members, including some of those that did not support other elements of the proposal in GEN/205 noted that adding "fishing related activities in support of such fishing" here would bring Article 3.1 into line with the scope of the disciplines in Article 1.1, as well as with other disciplines that apply to both fishing and fishing related activities.

37. That said, some Members opposed this change because they said it would be incompatible with the mandate or with the current structure of Article 3 which is based on IUU fishing determinations. Given these concerns, the change is reflected in square brackets for further consideration.

Footnote 4

38. Footnote 4 defines the term "operator" for the purpose of the IUU fishing pillar. As I noted earlier, the source of this text is the facilitator's work, from which the definition of "operator" specific to the IUU fishing pillar has been extracted, with the more general part now reflected in Article 2(e).

39. I am fully aware of the different views on the effect of the references to "operator" in the IUU fishing disciplines. Some Members want to make it very clear through drafting changes that where a given operator operates multiple vessels, any affirmative IUU fishing determination in the sense of Article 3.2, even involving a single vessel, would trigger a prohibition of all subsidies to the operator as a whole, and not only subsidies to the vessel or vessels involved. Others take the opposite view, seeking to draft the rule so that in every case an affirmative IUU fishing determination would result in a prohibition of subsidies only to the specific vessel or vessels that actually engaged in the IUU fishing, regardless of the nature or scope of the IUU fishing determination.

40. The text in Rev.1, which was retained without changes in Rev.2, reflects an effort to find a balance between these two sets of views, and equally or more importantly, to ensure that the WTO does not itself become involved in or prejudge the substantive nature and scope of any IUU fishing determinations, which is a critical priority for many Members. In particular, no changes have been made to specify this one way or the other. Instead, the intention of the current drafting is that the scope of the subsidy prohibition will be determined by the scope of the IUU fishing determination. That is, if an IUU fishing determination implicates a single vessel, the subsidies to that vessel are

what would be prohibited. If, however, an IUU fishing determination implicates the operator, instead of or in addition to the vessel, the subsidies to that operator also or instead would be prohibited.

41. While of course interested Members are free to come back to this issue in the clause-by-clause discussions, in my view the approach in the current drafting is the only way to address these issues neutrally, and without the WTO prejudging outcomes or effects of IUU fishing determinations as such.

ARTICLE 3.2

42. Article 3.2 provides that, for the purpose of triggering the subsidy prohibition in Article 3.1, a vessel or operator would be considered to have engaged in IUU fishing when it was found to have done so by one of the entities listed in Article 3.2, namely a coastal Member, a flag State Member, or a relevant RFMO/A.

43. During our work so far, this language and other related provisions under Article 3 have been revised to make it clear that for the purposes of this instrument, there is no hierarchy among the IUU fishing determinations by these entities, nor is there any question as to their competence to make IUU fishing determinations in the circumstances that are relevant to them. The text, which has not been changed in Rev.2, has evolved based on our discussions, and prior changes include:

- clarifying the term "determination" in Articles 3.2 and 3.3 as an "affirmative determination"; and

- adding footnote 6, which states that this Article "shall have no legal implications regarding the competence" of any listed entity under other international instruments to make an IUU fishing determination.

44. In addition, port State Member and subsidizing Member were removed from the list, with provisions related to port State Members contained in Article 3.5.

45. Overall, these changes and the text of Article 3.2 were intended to ensure that a subsidy prohibition would be triggered when any one of these three types of listed entities made an IUU fishing determination. The determination would not be nullified or cancelled by a contrary finding by another listed entity. One additional concern, that a shorter-duration penalty by one listed entity in respect of a given situation of IUU fishing might prevail over a longer-duration penalty by another entity, is addressed in Article 3.4 through language indicating that the longer duration will prevail. All of this said, I am aware that some concerns may remain and these can be raised in this new phase of our negotiations.

ARTICLE 3.3

46. Moving into Article 3.3, you will see as a major change the presentation of two alternatives following subparagraph (a). Before turning to those alternatives, recall that subparagraph (a) defines an affirmative determination as the final IUU fishing finding or listing. This language has been broadly supported by Members and it remains unchanged.

47. Turning now to the two alternatives for Articles 3.3(b) and (c). The first alternative is the text from Rev.1, that is, the requirement in subparagraph (b) that, to trigger the subsidy prohibition, an IUU fishing determination by a coastal Member under Article 3.2(a) must be based on positive evidence and follow due process, with elaboration of this in subparagraph (c).

48. As you know, a considerable number of Members have indicated that they need some sort of due process provisions in respect of coastal Members' determinations before they would be willing to implement a subsidy prohibition. Some others, however, have opposed any such requirements on the basis that determinations by coastal Members must in any case obey the domestic laws and procedures of those Members, such that their IUU fishing determinations should be accepted as such as the trigger for the subsidy prohibition. Many Members affirmatively support the drafting in ALT 1, or can live with it as an acceptable compromise between the opposing views of others.

49. Concerning the standard itself, assuming that one were included in the disciplines, there are different views on what it should be. As noted, some support the current "positive evidence" and "due process" language, while others have expressed a strong preference for a more prescriptive standard if the approach in ALT 1 ultimately is retained.

50. As this is one of two alternatives, the previous square brackets around both subparagraphs (b) and (c) separately have been removed while brackets have been placed around those subparagraphs together to form ALT 1.

51. New to this revision is the second alternative. This text was suggested jointly by some Members who wanted to avoid using terms such as "due process", "positive evidence" or other suggested formulation of such a standard. In their view, such a standard could allow IUU fishing determinations, and underlying domestic systems, to be unduly scrutinized by the WTO. Instead, this alternative text takes more of a procedural approach, requiring timely notification from the coastal Member, and an opportunity for the flag state Member or subsidizing Member to provide relevant information and "to dialogue" with the authorities making the determination.

52. Here I would like to emphasize that Article 3.3 is one of the provisions that have many complex and sensitive links with various other provisions. In particular, an important link has been drawn by some Members between this provision and the way that territorial claims or delimitation of maritime boundaries are addressed in Article 11.4. Given this link, we will have to have a very focused discussion on these issues. I will later share my thoughts on how we can move forward.

ARTICLE 3.4

53. Article 3.4 sets the minimum duration of the subsidy prohibition as the duration of the sanction resulting from the relevant IUU fishing determination, or the duration that a vessel or operator remains listed as engaged in IUU fishing, whichever is the longer. Beyond this minimum duration, the subsidizing Member may take into account the nature, gravity and repetition of IUU fishing in determining the duration of the prohibition.

54. As you recall, when the draft was first consolidated, the text in this provision was in two separate provisions: in one, the subsidizing Member would have been able to take into account the nature, gravity and repetition of the offence in applying the subsidy prohibition. This was generally referred to as "proportionality". The other provision addressed the duration of the prohibition.

55. Since then, we have held a series of dedicated discussions on this, where two competing views emerged. Some Members considered that the subsidizing Member should have the final say on whether to apply the subsidy prohibition – considering that for "minor violations" this should not be required as it would not be "proportional" to the IUU fishing at issue. On the other hand, some other Members viewed this as creating a significant loophole by creating a self-judging standard. In their view, the authority determining IUU fishing should, and does already, take "proportionality" into account, in determining whether the activity rises to the level of IUU fishing in the first place, and in determining the nature and duration of the penalty. In this view, the subsidizing Member has no role in considering "proportionality", and the subsidy prohibition should always be triggered, in adherence to the minimum duration provision.

56. Based on all of these views, a possible compromise formulation emerged, which was reflected in the original version of the /276 text and remains unchanged in this revised draft. This formulation reflects the view that the concept of "proportionality" is taken into account by the relevant fisheries authority in making IUU fishing determinations, as well as in setting sanctions or listing the vessels and operators engaged in IUU fishing. As such, the minimum duration of the subsidy prohibition is the duration of the sanction or listing, with the longer applying to the prohibition where there is more than one sanction with different durations.

57. More recently during our work on this formulation, some additional textual suggestions and views have been presented on this text. Some of the discussion was a repetition of earlier ideas that have not gathered broad-based support – such as an absolute minimum duration, adding an absolute maximum duration, or deleting the minimum duration provisions altogether. Given that none of these views has gained broader support from the proponents of other views, the text of this provision remains unchanged.

ARTICLES 3.5-3.8

58. There are no changes in Articles 3.5 and 3.6. In Article 3.7, a minor adjustment has been made such that the required notification is now required upon entry into force. This takes into account the common-sense point that the WTO body referred to in this provision would only be established when the instrument comes into force, so that it would not be possible to notify it of anything before that date.

59. In Article 3.8, while the text remains unchanged, square brackets have been added around number 12 in "12 nautical miles". This reflects the evolution of Members' understanding of how best to account for the interests of low income, resource-poor and livelihood fishers, and the concern that 12 nautical miles may not be adequate. The square brackets reflect this point of discussion for our next phase; and square brackets have been added to similar special and differential treatment provisions referring to "12 nautical miles" under Articles 4 and 5.

60. Other than these minor changes, the text in Article 3.5 through Article 3.8 remains essentially unchanged. On these four provisions, especially Article 3.8, let me underscore again that although no changes were made in this revision, this does not imply that we have an agreement here or anywhere else where no changes were made. For example, on Article 3.8, I am well aware that some Members question whether any special and differential treatment is warranted in the IUU fishing pillar, while some others think that the current Special an Differential Treatment (SDT) provision in Article 3.8 may not be sufficient, or should be refocused on other issues.

61. All of these issues can be raised by interested Members in this new phase of the negotiations. But in doing so, be reminded that they have not gathered broad convergence in the past.

ARTICLE 4

62. Article 4 remains virtually unchanged, except for the Article title and the square brackets around 12 in "12 nautical miles" in Article 4.4, for the reasons that I already mentioned.

63. You may note that footnote 9 defining the term "biologically sustainable level", which also is used in the overcapacity and overfishing pillar, has been slightly revised. I will explain the changes to this footnote in the context of the overcapacity and overfishing pillar.

64. Let me underscore once again that not revising this Article does not mean that we have an agreement here, or anywhere else where no changes were made.

65. For example, the phrase "and/or measures" in Article 4.3, which provides for an exception from the prohibition set forth in Article 4.1, remains in square brackets. Members believing that the only subsidies that should be permitted where the stock in question is overfished are subsidies that themselves are implemented to promote rebuilding the stock, consider that the phrase "and/or measures" should be deleted. Other Members, who consider that other kinds of subsidies also should be allowed so long as measures are implemented to promote rebuilding of the stock, seek to retain this phrase and remove the brackets around it.

66. So, further discussion is still needed on this point.

ARTICLE 5

67. Now we turn to revised Article 5, containing disciplines on subsidies contributing to overcapacity and overfishing. Here again, the title has been modified to match the wording of the mandate, as suggested by some Members.

68. On the substance, as you know, Members generally consider Article 5 to be the core of the new disciplines. Many of the issues we have been discussing are precisely in this pillar, which many Members consider to be the main locus of their concerns over the balance in the text. Reflecting this, Article 5 of Rev.2 contains a number of substantive changes compared to Rev. 1. These changes aim to attract a greater degree of convergence among Members with very different fundamental perspectives on the issues addressed in this article – in the disciplines themselves and their

associated special and differential treatment provisions – whilst maintaining ambition and looking after the balance with our sustainability mandate.

Articles 5.1 and 5.1.1

69. The chapeau of Article 5.1 contains the main prohibition in this pillar, and is followed by an illustrative list of subsidies that presumptively contribute to overcapacity or overfishing. Article 5.1 is qualified by Article 5.1.1, which provides that a subsidy is not inconsistent with Article 5.1 if the subsidizing Member demonstrates that measures are implemented to maintain the fish stocks at a biologically sustainable level.

70. The elements in subparagraphs (a) through (h) were already contained in the illustrative list in Rev.1. The only change to the list is the addition of subparagraph (i), which has been moved from former Article 5.2(a). I will explain this change in a moment.

71. Still concerning the list in Article 5.1, I do note that some Members have suggested certain drafting changes to some of the listed subsidies, and others have suggested a broader restructuring of Articles 5.1 and 5.1.1 more generally.

72. For suggestions to change individual items in the list, if any, I believe these are best suited for consideration in the clause-by-clause process. Without prejudice to any such suggestions, I would also remind Members that given the short time ahead delegations should try to stay focused on the things that are of critical importance for them.

73. Still concerning Article 5.1, some Members have expressed concerns over the presumption that the listed subsidies contribute to overcapacity and overfishing, and have suggested redrafting Articles 5.1 and 5.1.1 to address these concerns. Having carefully considered the various suggestions for restructuring these provisions, my conclusion is that their aim and effect is essentially the same as that of the provisions as currently drafted, albeit using different approaches. In particular, the Rev. 2 text, like Rev.1, contains no requirement to make the required demonstration before a listed type of subsidy could be granted, nor any implicit requirement to stop all current subsidization until such a demonstration is made. Instead, the aim and operation of the text 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 in sustainability considerations. It is this linked set of subsidies and sustainability measures – drafted and implemented as the Member sees fit - that would be the subject of the demonstration. As for the demonstration itself, it would naturally begin with the notifications as required in Article 8.

74. Discussions in the relevant committee would allow for other Members' questions and doubts, which might lead to bilateral discussions. Ultimately, as a last phase, a dispute settlement proceeding could be initiated to address the issue. Thus, while the list in Article 5.1 refers to certain forms of subsidies that have been identified in many proposals and elsewhere as potentially the most likely to contribute to overcapacity and overfishing, the provisions of Article 5.1.1 make clear that because the issue is over-capacity and over-fishing, any given subsidy needs to be looked at in the specific context in which it is provided. It is exactly that context that is the subject of the demonstration.

75. To elaborate a bit further, from my reading of the current draft text, I would expect that in the vast majority of cases simply complying with the notification requirements would be sufficient to "demonstrate" to the satisfaction of other Members that the sustainability elements under Article 5.1.1 have been met. Most of the remainder would be clarified through the Committee work and dialogue among Members. Look at the SPS and TBT Agreements; in over 25 years there have been tens of thousands of notifications, hundreds of specific trade concerns raised, with only a handful of disputes begun, most of which were resolved before even getting to a ruling.

76. Returning to the drafting in the text, there were suggestions to include a footnote to clarify the term "demonstrate". However, in other Members' views, the demonstration of sustainability should not be a rigid straitjacket that could apply in a single way to all Members and in all circumstances. "Demonstration" will have to depend on the specific situation of the fishery in question, the region of the world where the fishing takes place, the details of the subsidy programme, and so on and so forth. We cannot draft a multilateral rule broad enough to take all these specificities into account. Therefore, such suggestions have not been incorporated in the draft text.

77. To conclude, demonstration of sustainability under Article 5.1.1 is neither an impossible standard nor a meaningless procedural step. It is rather a step that would have to take account of the data available, the fishery or fisheries in question, and specific management measures. And it would include the various types of multilateral review and other scrutiny provided for in the disciplines.

Footnote 9

78. The first change in Article 5 that I wish to highlight is in footnote 9, which defines the "biologically sustainable level" of a stock in Articles 5 and 4 respectively. Let me start with an editorial change. In the previous version, there were two separate identical footnotes, 9 and 10. This has been simplified into a single footnote such that both Article 4 and Article 5 now refer to the same, single, footnote, numbered 9. This is a purely editorial change following the example in footnote 58 of the SCM Agreement, which is referred to in multiple provisions of that Agreement.

79. You would recall that this footnote stated that "MSY" was only one of several possible reference points that might be used to determine the biologically sustainable level of a fish stock. There are other reference points that could be equally valid in various circumstances and which might be completely independent of the concept of MSY. The previous revision included language submitted by a group of delegations on different indicators for determining these other reference points and an illustrative list of such indicators – level of depletion, or level of or trend in time series data on catch per unit effort. However, the more we debated it the longer the list grew when the whole point of the footnote was to give examples of what might be appropriate indicators.

80. With that in mind and based on discussions and suggestions brought forward by Members, the footnote has been simplified and the language on indicators for determining other reference points has been deleted. I would stress that shortening the list of examples does not mean that the range of potential candidates for reference points is narrower; it just means that the list of examples is shorter.

Article 5.2

81. Turning to the prohibition of subsidies contingent upon fishing outside the subsidizing Member's jurisdiction and subsidies to fishing in the high seas.

82. As you know, Articles 5.2 and 5.3 in Rev.1 were intended to complement the main prohibition in Article 5.1 on subsidies that contribute to overcapacity and overfishing. Specifically:

- Article 5.2(a) was an additional prohibition on subsidies contingent upon, or tied to, fishing outside the subsidizing Member's jurisdiction;

- Article 5.2(b) provided for an exception from this prohibition for the non-collection of government-to-government payments under fisheries access agreements, provided that the requirements in Article 5.1.1 are met; and

- Article 5.3 was a prohibition on all subsidies to fishing in the unregulated high seas – that is, outside of any Member's jurisdiction and outside the competence of any RFMO/A.

83. These provisions were discussed extensively in the last several weeks and Members' views continue to differ.

84. On Article 5.2(a), a number of Members wanted to delete it entirely from the text, while some Members supported it, and several suggested, as a possible compromise, that Article 5.2(a) should be subject to the sustainability elements embedded in Article 5.1.1.

85. Given this wide divergence of views, I found the latter suggestion to be the one that might attract more convergence. Therefore, subsidies contingent upon, or tied to, fishing outside the subsidizing Member's jurisdiction have been added to the list of subsidies that contribute to overcapacity or overfishing in Article 5.1, as new item (i). This language has been included in brackets.

86. As an editorial change, the footnote to this provision, new footnote 10, has been revised to make it consistent with the provision to which it now refers.

87. This brings us to Article 5.2(b) of Rev.1, the exemption from the prohibition in Article 5.2(a) of Rev. 1 for the non-collection of government-to-government payments under access agreements, subject to, *inter alia*, compliance with the requirements of Article 5.1.1. Since this is an exemption from the prohibition in previous Article 5.2(a), which now has been moved to Article 5.1 and thus has become subject to the provisions of Article 5.1.1, as in any event was the case under the previous Article 5.2(b), this provision would appear to be redundant and thus has been deleted.

88. It is important to note that from my perspective the cleanest way to reflect this suggested change in Rev.2 is as it is being presented today. However, this means that the brackets around the language – now in Article 5.1(i) – represent the overall change just described, and not only the language contained within the brackets. Meaning that if Members accept eliminating the brackets, the change is perfected; but if you do not, the entire amendment would need to be reverted to the previous version as reflected in Rev.1.

89. Then we have Article 5.3 of Rev.1 concerning prohibition of all subsidies to fishing in the high seas – that is, outside of any Member's jurisdiction and outside the competence of any RFMO/A. This provision has attracted either support or acceptance from a broad range of Members. Hence, this provision remains in the draft text as the new Article 5.2.

90. The term "coastal non-Member" has been added to this provision, in square brackets, to reflect discussions to the effect that this provision is intended to prohibit subsidies only to those areas where there is no fisheries management in place, regardless of whether the coastal entity having jurisdiction over that area is a WTO Member or not. As I said, this phrase is in brackets, meaning it is subject to further discussions.

Article 5.3

91. Concerning Article 5.3 of Rev. 2, on subsidies for a vessel not flying the flag of the subsidizing Member, this Article now contains two alternatives.

92. Alternative 1 contains the unchanged language from Article 5.4 of Rev.1 and reflects the views of those Members who consider this provision to be necessary.

93. However, some Members reject the presumption underlying this proposed prohibition and have been pressing for its deletion. An alternative was suggested to address this concern, which is now included as the second alternative of Article 5.3.

94. Both alternatives are in square brackets and more discussion and engagement among concerned delegations is needed on this issue.

Article 5.4

95. Turning to special and differential treatment which now appears in Article 5.4 due to the restructuring and thus renumbering of the preceding provisions.

96. SDT has been an issue of particular concern for many Members and many of our discussions in the past weeks have been revolving around this provision.

97. Article 5.5. ALT 1 of the previous draft text has not attracted convergence.

98. ALT 2 of Article 5.5 in Rev.1, while having a certain support, was considered imbalanced by a range of Members, although for opposite reasons – some considering it too narrow and rigid and, at the opposite end of the spectrum, others considering it too broad and permissive.

99. As our discussions have continued, they have evolved away from both of the alternatives in Rev.1, and I have been receiving new suggestions from different Members and groups of Members on this topic.

100. In meetings held in the past several weeks, in both small groups and bilateral consultations with interested delegations, Members have been saying that I as Chair should try my hand at putting together different elements in the form of a new clean text on SDT for Article 5, reflecting where I consider a landing zone could lie among different views.

101. On the basis of all of this, I have made certain changes to the previous formulations on SDT in the overcapacity and overfishing pillar, with the aim of making these provisions more broadly acceptable to Members. For the reasons that I have just explained, the new draft text replaces both of the alternatives that appeared in Rev.1, although the elements incorporated are common to elements from such alternatives and will not be unfamiliar to anyone.

- A first change is that for the sake of coherence I have moved the SDT provisions for LDC Members in respect of the overcapacity and overfishing disciplines to Article 6, thus consolidating all of the LDC-specific provisions in the disciplines. I will explain this in more detail when I come to Article 6.

- Second, the previous Article 5.5(c) concerning the transitional period has changed its function in Rev.2 and is now in Article 5.4(a), in square brackets, with some specific changes.

  First, whereas the transition period in the inner square brackets in the earlier draft was 5 years, this has been replaced with a placeholder, "X" in square brackets. This reflects the evolution of Members' discussions on this text, ranging from some who think that 5 years is already too long to those who have suggested a transitional period for as long as 25 years. This is clearly an area that needs further discussions.

  Second, inner square brackets have been placed around the phrase "within its EEZ and the area of competence of a relevant RFMO/A" to indicate that the geographical scope of this paragraph could be a focus of further debate in line-by-line negotiations, particularly in light of the movement of former Article 5.2(a) into the list in Article 5.1.

- Third, Article 5.4(b) provides for certain flexibilities that would apply beyond the transitional period under Article 5.4 (a). This responds to what I have been hearing from many developing Members over the past weeks highlighting as their top priority for SDT: (i) being able to support their subsistence, artisanal and small-scale fisheries; and (ii) not disciplining those developing Members with insignificant shares of marine global capture production. These elements are reflected in Article 5.4(b) of Rev.2.

102. Article 5.4(b) (i) provides for SDT in the form of an exemption from Article 5.1 based on a developing Member's annual share of global marine capture production, known in these negotiations as the '*de minimis*' approach. This provision is in square brackets. Concerning the *de minimis* level itself, I note that the figure of a 0.7% share has been suggested by several delegations, and this has been used as a starting point for discussions. This is the same figure that was used in a similar provision in Rev.1; and I should remind Members that as explained for an earlier draft, this figure was also part of and widely discussed by Members during the SDT-specific Friend of the Chair process. The figure, however, remains in brackets, as it needs further discussion.

103. The data used for calculating this figure are the official FAO statistics on wild marine capture production which have the same scope as the definition in Article 2(a), in particular excluding aquaculture and inland fishing. At the request of a number of Members last week, the Secretariat has been in touch with the relevant FAO department which has confirmed the data source and the table with the data that we have been using, which will be circulated to all Members later today. In this way, all Members can discuss these data on the basis of one source, which is the one identified by the FAO as relevant to our work here.

104. Concerning Article 5.4(b)(ii) on SDT for artisanal and small-scale fisheries, I have noted that several Members have indicated that in some cases artisanal fishing may go beyond 12 nautical miles, and some have suggested to extend this limit up to the Member's EEZ. Other Members, however, believe that no vessel navigating beyond 12 nautical miles should be considered as artisanal fishing, and thus are against extending this limit in the provision. To reflect the need to further discuss this issue, the number 12 in "12 nautical miles" is now in square brackets.

105. From our extensive discussions on this issue, Members have also suggested that Members availing themselves of the use of the SDT provisions shall endeavour to ensure that the subsidies provided do not contribute to overcapacity and overfishing. This has been a shared view of both developed and developing country Members. To reflect this discussion, Article 5.4(c) has been included in this article.

ARTICLE 6

106. Article 6 contains specific provisions for LDC Members. Since the draft text was first consolidated over a year ago, this Article was composed of two provisions: one granting a transitional period for graduating LDC Members; and the second calling for due restraint for all other Members in raising matters involving LDC Members.

107. In Rev.2, three new changes have been made, all of which relate to the special and differential treatment specific to LDC Members under Article 5 which has now been moved to Article 6. The move was not substantive, but for consistency and coherence by consolidating all LDC-specific provisions in one place.

108. In substance, the new Articles 6.1 and 6.2 ALT 1 provide for special and differential treatment under Article 5. Article 6.1 is a straightforward exemption for LDC Members from the prohibition under Article 5.1, which in Rev. 1 was found in Article 5.5(a) of ALT 2.

109. In this new revision, Article 6.2 ALT 1 provides a preferential timeline for the graduating LDC Members for using the time-bound special and differential treatment under Article 5.4(a). In particular, whereas the transition period in Article 5.4 starts at the date of entry into force of these disciplines, for graduating LDC Members, this transition period would start upon graduation.

110. However, with this new language, the existing provision on the transitional period for graduating LDC Members became redundant for the purpose of Article 5, in the sense that both provisions were meant to provide an additional transitional period for graduating LDC Members. To reflect this, the existing and new transitional mechanisms for graduating LDC Members have been formulated as alternatives, with the existing text being ALT 2.

111. The existing text of Article 6.3 remains the same, but it now adds a new second sentence that an LDC Member shall "endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing". This was intended to mirror in the LDC Member-specific provisions the same "best-endeavour" language that has been added to SDT in Article 5.4 pertaining to developing country Members.

ARTICLE 7

112. Article 7 is a provision on technical assistance and capacity building. I would recall that there are ongoing discussions dealing with this provision and that any change would be premature at this stage. As a result, this text remains unchanged.

ARTICLE 8

Footnote 13

113. Article 8, on notification and transparency, has changed in a number of ways, reflecting the constructive discussions we held few weeks ago as well as subsequent work building on that discussion.

114. The first change in Article 8 is in footnote 13 to the chapeau of Articles 8.1(a) and (b). Let me start with an editorial change. In the previous version, there were two separate footnotes, one to subparagraph (a) and another to subparagraph (b), but both containing the same language. This has been simplified into a single footnote such that both subparagraphs (a) and (b) now refer to the same, single, footnote 13. This is a purely editorial change following the example in footnote 58 of the SCM Agreement, which is referred to in multiple provisions.

115. Substantively, in the previous draft, this footnote granted an extension of the notification period to all developing country Members. As a result, all developing country Members were allowed to make the required notification every four years, instead of two years that would apply to other Members.

116. During our discussions on this text, some Members, including several developing country Members, considered that general development status is a poor indicator of a Member's capacity to notify or the level of sophistication of its fisheries subsidies notification system. In this view, for some developing Members, an extended period may not be needed or warranted. In addition, some developing Members were of the view that a notification interval that is too long may not be helpful for them in any event. These Members preferred to reserve the extended notification period for those that need it the most, such as LDC Members and developing Members with a small fisheries footprint.

117. To reflect this discussion, and to facilitate further talks in the next phase, the footnote has been modified so that the extended notification period applies only to LDC Members and developing Members whose share of the global catch falls below a threshold, using the criteria used in Article 5.4(b)(i).

Footnote 14

118. Next, Article 8.1(a) contains two items that are required to be notified as part of each Member's subsidies notification, one of which is catch data by species for fisheries for which the subsidy is provided.

119. On Tuesday, 2 November, I had a meeting with a small-group to discuss the question of notification of catch data by species as in Article 8.1(a)(ii). The aim was to focus on this requirement in the context of multispecies fisheries, which has been a source of concern for some Members.

120. During our work so far, including during this small-group meeting, some Members have expressed their concern that species-specific catch data are difficult to collect, in particular where multiple species share the same waters and fishers catch a wide variety of fish and are unable to report their catch by species. Given these difficulties, some Members suggested that for such fisheries they should be able to provide catch data using a more general aggregation. To address this particular concern in the multispecies context, footnote 14 has now been added to Article 8.1(a)(ii), stating that: "For multispecies fisheries, a Member instead may provide other relevant and available catch data".

121. Before moving on, let me recall that some Members suggested also addressing this concern by moving the species-specific catch data requirement to Article 8.1(b), which requires notification "to the extent possible". During our work, it has been clarified that the concern regarding multispecies fisheries is disaggregating catch data by species, not collecting and reporting catch data as such. For instance, I have been reminded that aggregate, mixed catch data are often provided to the FAO for reporting purposes. The revision thus reflects the straightforward requirement to notify catch data, with a flexibility in the new footnote that would allow more aggregated data to be reported for multispecies fisheries.

Article 8.1(b)

122. This leads me to the next change, which is the removal of the square brackets around the phrase "to the extent possible" in the chapeau of Article 8.1(b).

123. As you know, this phrase qualifies the notification requirements in Article 8.1(b) – for the status of the fish stocks, relevant conservation and management measures, information about fishing vessels, and fleet capacity information – so that such information is required to be notified "to the extent possible". You would recall that we had a good exchange on this question on 4 October, where a broad range of Members said the brackets should be removed – and now they have been.

Article 8.1(b)(i)

124. In Rev.1, the first item under Article 8.1(b) required notification of the status of the fish stocks in the fishery for which the subsidy is provided, along with whether such stocks are shared or managed by an RFMO/A.

125. In our discussion of this text, some Members also wanted to add "the reference points used" in relation to the status of fish stocks. In their view, notification of the stock status is linked to the sustainability-based conditions in Articles 4.3 and 5.1.1, which use reference points as a basis for stock assessments in footnote 9. This is now reflected in the revised draft for our further discussion.

Article 8.2(b)

126. Article 8.2 includes information that should be notified relating to IUU fishing determinations.

127. In this revision, Article 8.2(b) is new and it would require notification of any vessels or operators for which a Member has information that reasonably indicates the use of forced labour.

128. As you recall, this proposal was first raised in May this year in TN/RL/GEN/205, which we have discussed on several occasions, along with the language in Article 3.1 that I have already noted. In those discussions, various Members shared the particular concern over the use of forced labour in illegal fishing activities and supported enhanced transparency on it. Some others said they were not proponents of this initiative but found it acceptable.

129. However, some other Members have expressed opposition on the basis that this issue is outside of the WTO's competence. Given these different views, the change is reflected in square brackets for further consideration.

Article 8.2(c)

130. Article 8.2(c) on transparency in respect of government-to-government access agreements has been expanded. In Rev. 1, only the titles of and parties to the agreements or arrangements needed to be notified. In our discussion, there was a broad call for greater transparency, and specific drafting suggestions for this were made.

131. The list of information now found in (i) through (vi) includes the titles, parties, full text and other details of access agreements or arrangements, and how such access is subsequently used. These changes reflect the suggestions made by Members during our discussions. At the same time, some Members have said that providing this much detail in a notification is unnecessary when the required information is already publicly available and easily accessible. To address this concern, the new draft allows this requirement to be met by providing an electronic link.

132. Let me also note a small, additional change from the reference to fisheries access "agreements" to "agreements or arrangements", which is meant to cover the various forms that such instruments may take. This change is for completeness and is not meant to have any substantive implication.

133. As I already have explained under Article 5, the text in that Article in Rev. 1 that specifically referred to access agreements or arrangements has been deleted in this revision. However, Article 5.1, along with Article 5.1.1 and footnote 9, means that subsidies for fishing or fishing related activities under such an access agreement or arrangement remain relevant to the disciplines in Article 5.

134. Before moving to the next provision, let me recall that there have been other suggestions for additional notification and transparency requirements. Among others, as I said earlier in relation to Article 1.2, some Members want to introduce additional notification requirements for non-specific fuel subsidies, either as an alternative or a complement to Article 1.2. But as I also mentioned, given the close linkages among all these issues, such an amendment in the transparency provisions would be premature at this stage. I will share my thoughts on how we can best move forward on this issue in a moment.

Article 8.5

135. As you know, Article 8.5 was new in Rev.1, and it requires notification of certain information about RFMO/As based on the textual suggestions made by some Members. During the discussion of this language, a number of concerns were raised. In particular:

- that the initial draft said annual notifications, but some Members found this unnecessary since the required information – such as the text of the legal instrument, parties to and competence of RFMO/As, relevant conservation and management measures, and the regime governing IUU fishing determinations – generally do not change from one year to another;

- in addition, given that more than one WTO Member may be a party to a given RFMO/A, requiring each Member to make the same notification would be redundant; and

- as with in Article 8.2(c), some Members were concerned that notifying all of these details may not be necessary when the required information is already available online.

136. Based on these views, the revised draft Article 8.5 now:

- requires one-time notification upon entry into force of the disciplines and prompt notification of any subsequent changes thereafter;

- allows groups of Members to make the required notification together; and

- allows this requirement to be met by providing an electronic link as set out in a new footnote 16.

Article 8.6

137. The last paragraph under Article 8 is Article 8.6. This is a new provision explicitly clarifying that nothing in Article 8 requires the provision of confidential information.

138. While some Members considered that this was already implied, for example in the qualifier "to the extent possible" in Article 8.1(b), several Members raised a need for express language. This concern was raised with respect to different provisions under Article 8, including the vessel information under Article 8.1(b) and some information pertaining to government-to-government access agreements under Article 8.2(c). Thus, the new text in Article 8.6 is drafted to apply to Article 8 as a whole.

ARTICLES 9 AND 10

139. There are no changes in Articles 9 and 10, except for a small change, removing the brackets around the title of Article 9, "Institutional Arrangements". This change is not meant to indicate any substantive change, including on whether the fisheries subsidies disciplines should be an annex or a stand-alone agreement. It is only to indicate that there has not been any objection to this text as such, setting aside the issue of whether we keep this Article or not depending on the eventual legal form of the disciplines.

140. Of course, let me also recall that the absence of changes does not imply that Members have agreed to what is contained in these provisions. It is clear that some issues remain to be further discussed and resolved in both of these Articles. In particular, I have heard various ideas and suggestions on the review mechanism, which is contained in Article 9.6, specifically on when the first review should take place, ranging from few years to 10 or more years after the entry into force.

141. On the dispute settlement provision in Article 10, suggestions have been made on a range of issues, from applicability of Article 4 of the SCM Agreement to remedies and countermeasures. Dispute settlement, as you know, is a complex and sensitive issue, and also one that would benefit from more focused discussions before we take it up clause-by-clause, and I will address this point shortly.

142. I am also aware that there are other issues that have been raised concerning these provisions, which is precisely the task ahead of us in the clause-by-clause process.

ARTICLE 11

143. There are no changes to the Rev.1 versions of Articles 11.1 to 11.4 in this new revision. That said, and as I mentioned before, it is clear that we will need to have further focused discussions on Article 11.4.

144. In addition, I would point to Article 11.5 which is new text in this revised draft, in square brackets. It is based on textual suggestions made by some delegations and groups of delegations, and it clarifies that, except as provided in the disciplines, a Member neither becomes bound by decisions of, nor recognizes, any RFMO/A of which it is not a party.

145. This is intended to reflect a general understanding I heard from Members that our mandate is about fisheries subsidies. While RFMO/A decisions and measures are referred to in the text, these references are made for the purpose of fisheries subsidies disciplines, and are not meant to have implications apart from those disciplines.

146. To this end, there were a number of different ideas to address this issue. Some were more broadly formulated in terms of international law and as a scope provision; while some were narrower and formulated only with respect to RFMO/As, and placed in Article 11. The revised draft text in Article 11.5 seeks to reflect the common denominator of these various proposals as a starting point of our discussion on this issue for the next phase.

CONCLUSION

147. This brings me to the end of my explanation of the revised text. Thank you for bearing with me, I know that was a lot of information. To help you in assessing the revised draft text, as I have done for previous iterations of the text I will circulate this detailed explanation to you shortly after this meeting.

148. Regarding next steps, where we need to go from here is simple: we have to genuinely negotiate. We have only three weeks left until MC12 and only two weeks before we need to send something to Ministers through the General Council. Our objective before then is to collectively evolve this draft text ideally into a completely clean text, or at least as clean as possible with only one or two issues left for our Ministers to decide. As I communicated to you in my e-mail of 4 November, and as has been the plan since we resumed our work following the summer break, we now will need to meet very frequently – essentially every day – starting tomorrow, to review everything together clause-by-clause.

149. For tomorrow, although I had previously suggested that we start at 10 AM, I now am suggesting instead that we start at 3 PM. The reason for this is to give your capital-based officials in their respective time zones sufficient time to review the revision and the addendum containing the explanation that I have just presented, before we start our detailed discussions.

150. To kick off our work this week, I suggest that we start by focusing on the following issues.

- Tomorrow afternoon starting at 3 PM, I suggest that we discuss the choice between ALT 1 or ALT 2 in Article 3.3 of the IUU fishing pillar. The Secretariat has made arrangements in the event that we need to continue that discussion past 6 PM;

- Starting Wednesday from 10:30 AM, I suggest that we take up the overcapacity and overfishing pillar, beginning with special and differential treatment under Article 5.4 and continuing through to Article 5.1.

151. For now, this is as much forward planning as I can provide. We will need to see how these initial discussions go, and based on that make any necessary tweaks to the process. I will of course keep this in mind as we proceed, and I would welcome any feedback from delegations in this regard as well. The main thing is that, to be able to thoroughly consider each provision of the text, we will need to conduct our work, and be prepared to adjust our methods, so as to make progress as quickly

and efficiently as possible. I also would recall the many interlinkages among provisions, and would anticipate that delegations will be flagging these as we discuss any given provision. In addition to helping us to maintain a holistic view of the text as we focus on the specific drafting of individual provisions, this also may lead to a natural logic in how and when we take up different parts of the text.

152. As I mentioned a few moments ago, it is clear that not all draft provisions in the text are at the same level of maturity, with some still needing additional focused technical discussion. Because we have spent essentially all of our time since September focusing on the key "macro issues", we have not yet had time to turn to other important areas of the text, although we know that various Members have issues they wish to see addressed in those areas. For now, the areas of the text that I believe would benefit from additional technical discussion before we take them up clause-by-clause are:

- Article 10;
- Article 11.4; and
- Article 1.2.

153. Given the short time that we have and the need to progress our clause-by-clause work on the main sticking point issues, I believe the best way to advance the technical discussions in these other areas is to ask a couple of Friends of the Chair to take on those issues for a short period. In particular, the idea is for them to take a few days to work with interested Members on a particular issue in various configurations, and to bring the results back to the Negotiating Group for consideration in the clause-by-clause discussion. I am reaching out to some possible Friends and will communicate who they are in the very near future.

154. Taking this into account, for this week I suggest that tomorrow afternoon, all day Wednesday, and Thursday morning we meet amongst interested delegations to discuss the provisions I identified a few minutes ago, and then reserve Thursday afternoon for meetings in various formats, including time for Members to consult with each other, and for other meetings in different configurations including possibly with Friends of the Chair.

155. Finally, last but far from least, let me provide my specific suggestions, and indeed entreaties, to all of you on how I think we should engage in the clause-by-clause discussions.

- First and foremost, and as I reminded Members in our last TNC meeting, we are no longer debating, we are negotiating. Given the interlinkages and the careful balance we must preserve, if a delegation wants to make substantive changes in one area, that delegation should be ready to make offsetting concessions, or consider alternative ways of achieving the same objective that may be more acceptable to others and, most importantly, consider the possible implication their suggestion would have for other parts of the text. That is, a suggestion that addresses your concern but takes us away from convergence does not help us with our objective. Likewise, a suggestion intended to attract greater convergence should seek to address concerns of Members holding different views.

- Second, it is our collective responsibility to not build a new Christmas tree – that is not what Ministers asked us to deliver (despite that fact that we are nearing the festive season). In this regard, it is critical that collectively we hold ourselves and one another to a high standard for requesting substantive changes. Only those suggestions that seem to attract a higher level of convergence, from a diverse group of Members, should be seriously entertained. Furthermore, while delegations are of course free to suggest technical changes aimed at clarifying the drafting, at the end of the day if such suggestions do not attract convergence, the Negotiating Group will need to move on quickly. Regardless of the nature of a suggested change, whether substantive or technical, the delegation making the suggestion should always ask itself "what can my delegation live with"? Again, we will need to be very disciplined as we collectively consider drafting suggestions, to focus on those that address concerns and attract more convergence among all Members. The key word here is the word "and".

- Third, we all must remain open, flexible and pragmatic. As I mentioned earlier, different issues are reflected differently in the text, so the nature of the discussions should reflect these differences. That is, we may need to use different approaches or working methodologies for different issues, as no single method will necessarily work for all issues. In addition, in terms of scheduling, while I will try my best to give you as much advance notice as possible for what we will take up when, this is a rapidly evolving situation and we will need to be guided by how the discussion of one issue may naturally lead us into another. So please be prepared for anything – this is the nature of the end game.

- Last but certainly not least; please do not bring statements.

156. Before I conclude, I note that many Members have been requesting arrangements to allow remote participation of capital-based colleagues in the clause-by-clause discussions. To respond to this request, the Secretariat has arranged for Interprefy for all of the open-ended meetings.

157. Colleagues, we are closer than we have ever been in the 20 years of these negotiations. This is not an overstatement or an inspirational statement. We are literally two weeks away from a potential agreement, and we have made enormous progress in reconciling the very diverse perspectives and interests of the large number of WTO Members who have critical interests in fisheries and in these negotiations. And we have gotten here only because of your commitment and dedication, and how you have engaged with one another.

158. But we are not done. We absolutely cannot just pat ourselves on the back, let alone rest on our laurels. To the contrary, we need to capitalize on all of this progress and maintain an even higher level of intensity if all of this work is to finally pay off. It is no exaggeration that the work of the NGR over the past 20 years – and to an extent how the world views the WTO as a whole – will be judged by whether in the next two weeks we can finally deliver on our mandate. A lot is on your shoulders. But I have seen your collective commitment and dedication over the past two years first-hand, and I genuinely have no doubt that, we can make it happen.