

Thursday, February 3, 2022

2:00 to 3:00 p.m. CET

WEBINAR

Fisheries Subsidies:

State of Play and Where to Next?



Agenda

14:00 - 14:30: Walk-through of the new Chair's text

Alice Tipping, Lead – Sustainable Trade and Fisheries Subsidies, IISD

14:30 –14:50: Perspectives from stakeholders:

Sebastian Mathew, Executive Director, International Collective in Support of Fishworkers

Ernesto Fernandez Monge, Officer, The Pew Charitable Trusts

14:50 – 15:00: Open discussion

Chair's text presentation

Caveats:

1) Presentation reflects our reading of the text as it currently stands

- Presentation reflects IISD's reading of the Chair's text of 24 November 2021 (WT/MIN(21)/W/5)
- Other readings are possible.
- Other ideas and proposals not captured.

2) Nothing is agreed yet

- All of the text is in square brackets.
- Some areas are more stabilised but.....
- Areas of clear disagreement remain in clean text.

**Article 1:
Scope**

**Article 2:
Definitions**



Scope and Definitions

Overall approach: Rules apply to specific subsidies provided to fishing and fishing related activities at sea. Not subsidies to aquaculture, inland fishing, onshore activities. (Article 1.1)

Article 1.2

[The Instrument will also apply to non-specific fuel subsidies.]

Article 2 defines

- Fish
- Fishing
- Fishing-related activities
- Vessel
- Operator (**removes requirement that an operator be a person “on board”**)

**Article 3:
Subsidies to
Illegal, Unreported,
and Unregulated
(IUU) Fishing**



Subsidies to IUU Fishing

Overall approach: Subsidy prohibition triggered by a determination of IUU fishing, subsidizer decides duration

Article 3.1

- Subsidies prohibited for **vessels and operators** engaged in IUU fishing and fishing related activities in support of **(such?)** IUU fishing.

Article 3.2

- Subsidies prohibited when a coastal state, flag state or relevant RFMO/A makes an **“affirmative”** determination that a vessel or operator engaged in IUU fishing.

Article 3.8 grace period...

[Subsidies provided by developing and LDC Members to low income, resource poor and livelihood fishing or fishing related activities up to [12] nautical miles from the baseline cannot be challenged for [2] years]

Subsidies to IUU Fishing

Overall approach: Subsidy prohibition triggered by a determination of IUU fishing, subsidizer decides duration

Article 3.3

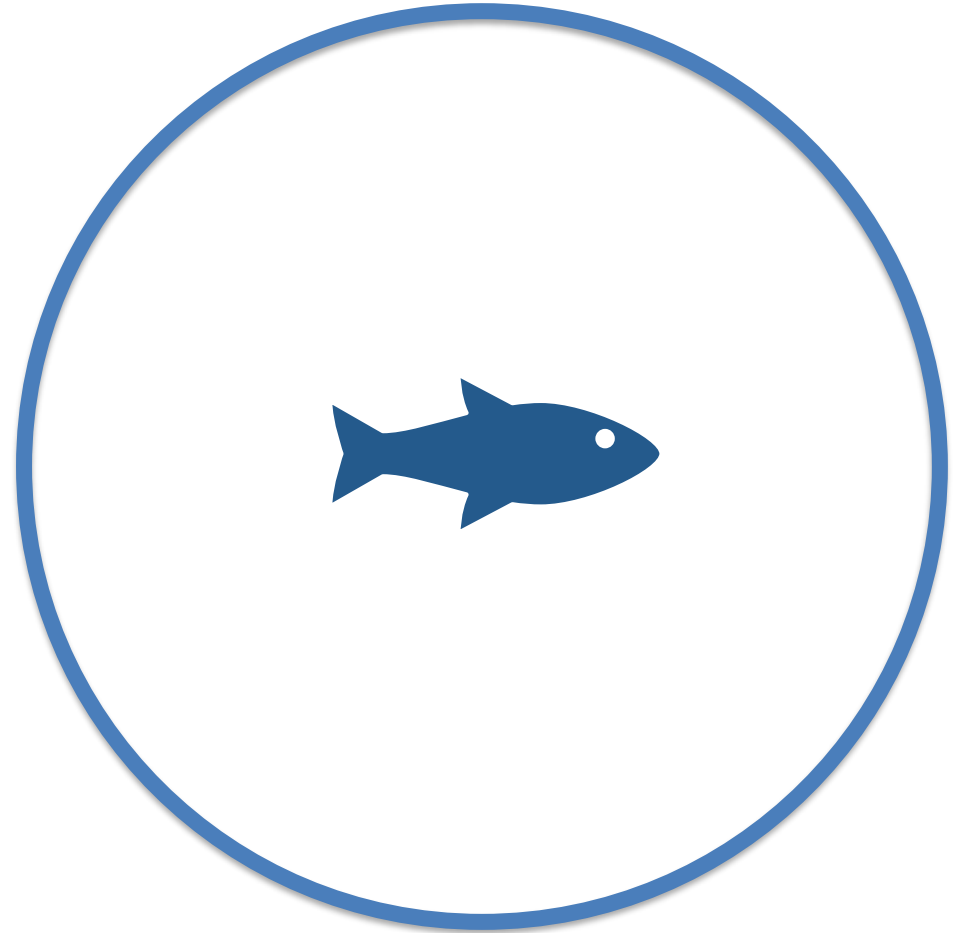
Determinations by coastal state Members must be based on **relevant factual information**, and must provide the flag and subsidising Member, when known, with:

- **Notification**, including factual information and applicable laws/regulations, of vessel detention or of initiation of an investigation; and
- **Opportunity to exchange relevant information, coastal state decides how and when.**
- Notification of the final determination and sanctions

Articles 3.4, 3.5

- Subsidising Member can decide the duration of the prohibition, depending on the “nature, gravity and repetition” of the infraction.
- But the prohibition lasts at least as long as the sanction or listing remains in place.
- Subsidising Member must notify measures taken to implement the subsidy prohibition.

Article 4: Subsidies to Overfished Stocks



Subsidies to Overfished Stocks

Overall approach: Subsidies are prohibited for overfished stocks unless subsidies or measures are implemented to rebuild those stocks.

Articles 4.1, 4.2

- Subsidies for fishing related to overfished stocks are prohibited.
- Stocks are overfished when national authority or RFMO/A recognizes it is overfished, based on the best scientific evidence available to that authority.

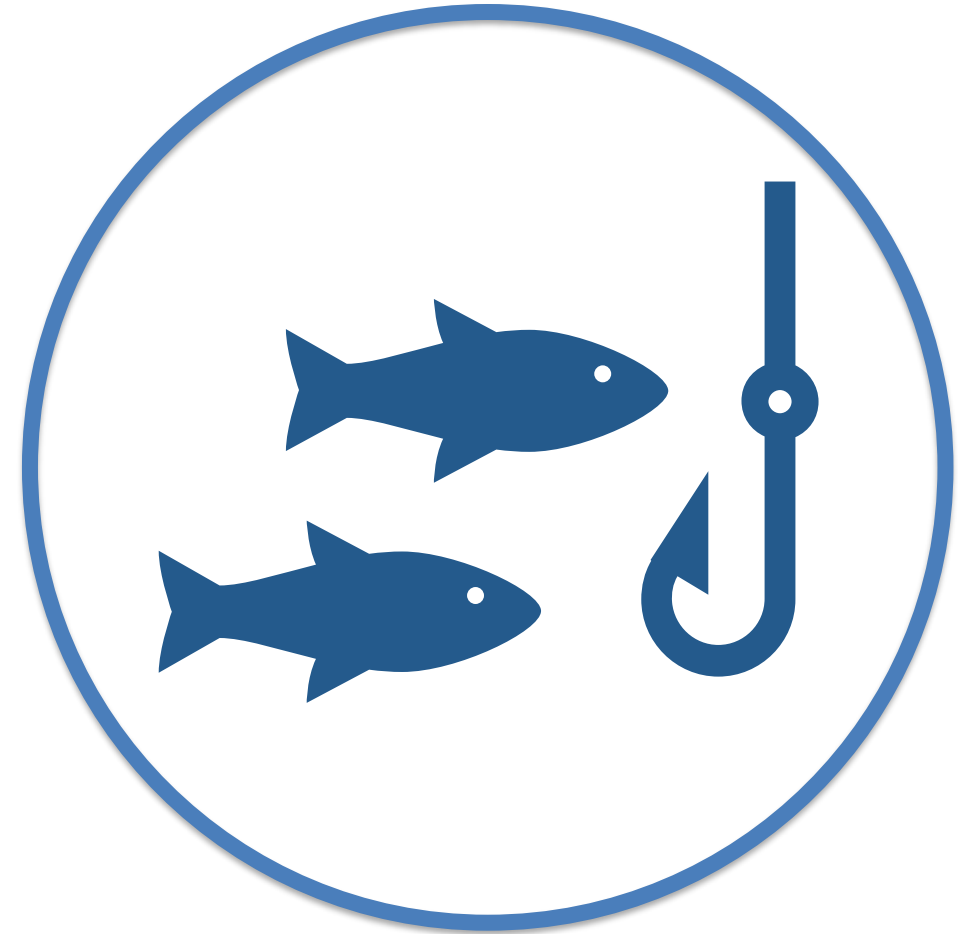
Article 4.3

- Exception for subsidies implemented to rebuild the overfished stock to a biologically sustainable level.
- Exception for **other subsidies if measures are implemented to rebuild** the stock.

Article 4.4 grace period...

[Subsidies provided by developing and LDC Members to low income, resource poor and livelihood fishing or fishing related activities up to [12] nautical miles from the baseline cannot be challenged for [2] years]

**Article 5: Subsidies
that contribute to
Overcapacity and
Overfishing**



Subsidies to Overcapacity and Overfishing

Main prohibition: Listed subsidies are prohibited unless measures are in place.

Article 5.1

Prohibition of subsidies that contribute to overcapacity and overfishing, including:

- Vessel construction, acquisition, and modernisation
- Purchase of machines and fishing equipment
- Purchase of fuel, ice and bait...
- <....>
- Subsidies **contingent on fishing outside EEZ...**

Footnotes to note:

[FN10]...a biologically sustainable level is the level determined by a coastal Member...using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A.

Article 5.1.1

- Unless a member can demonstrate it has measures **implemented to maintain stocks at a biologically sustainable level.**

Subsidies to Overcapacity and Overfishing - SDT

Main prohibition: Listed subsidies are prohibited unless measures are in place.

Article 5.4

Non-artisanal fishing

Time-limited exemption from Article 5.1 for subsidies by developing countries to fishing in domestic EEZs and RFMO areas for [x] years.

All fishing

Permanent exception from Article 5.1 for subsidies by developing country Members: Responsible for <0.7% of global catch. (“de minimis”)

Artisanal fishing

Permanent exception from 5.1 for subsidies by developing country Members for

- low income, resource-poor and livelihood fishing ...
- **within [12] nautical miles from the coast**

Members using 5.4 shall “endeavour to ensure” subsidies don’t contribute to overcapacity and overfishing

Footnotes to note:

[FN12: 5.4 does not apply to Members with more than 10% of global marine wild capture.]

Overcapacity and overfishing

Additional prohibitions: Some subsidies to fishing outside national jurisdiction are prohibited.

Article 5.2

- Prohibition of all subsidies to fishing in **high seas** outside the competence of an RFMO.

Article 5.3 Alt 1

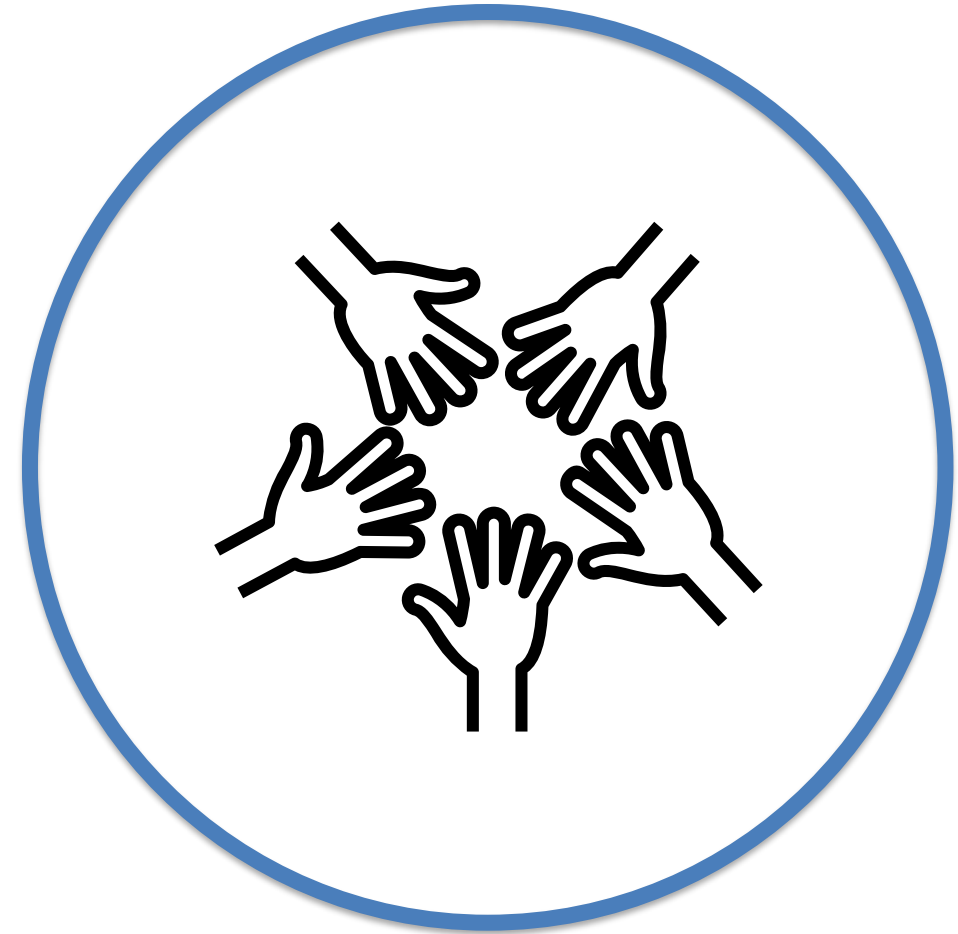
- [Prohibition of subsidies to vessels **not flying the flag** of the subsidizing Member.]

Article 5.3 Alt 2

- [Prohibition of subsidies to vessels the subsidizing Member does not have **jurisdiction or control** over, or which it cannot ensure is not contributing to overcapacity and overfishing.]

**Article 6: Provisions
for LDCs**

**Article 7: Technical
Assistance and
Capacity Building**



Provisions for LDCs

Article 6.1

- Full exemption from Article 5.1.

Article 6.2

- [Exception from 5.1 continues to apply for an additional [X] years after an LDC graduates

Article 6.3

- Members shall exercise due restraint in raising matters under the agreement with LDCs.
- LDCs and recent graduates using exception from 5.1 still “endeavour to ensure subsidies aren’t contributing to overcapacity and overfishing.”

Technical Assistance and Capacity Building

Article 7

- [Targeted TACB shall be provided to developing country Members.]
- [A voluntary WTO funding mechanism shall be established to support this assistance.]

Article 8: Notification and Transparency



Notification and Transparency

Members have obligations to notify fisheries-related information, including to invoke some exceptions.

Article 8.1

a) Members must notify:

- i) Type of fishing activity that is subsidised
- ii) Catch data for species in subsidised fisheries (see FN)

b) Members also notify to the extent possible:

- i) Status of stocks in subsidised fisheries, whether shared or managed by RFMO.
- ii) Conservation measures in place for relevant stocks
- iii) Name/ID of subsidised vessels
- iv) Fleet capacity for subsidised fishery

Article 8.6

a) **i) and ii)** must be notified in order to invoke - exceptions for subsidies to overfished stocks (4.3) exceptions for overcapacity/overfishing subsidies (5.1.1) and SDT for overcapacity/overfishing subsidies (5.4 and 6.2)

b) **i) and ii)** must be notified in order to invoke exceptions re: measures for overfished stocks (Art. 4.3) and for measures in other fisheries (Art. 5.1.1)

Footnotes to note:

FN 15: [LDC and “de minimis” Members can provide this information every 4 years]

FN 16: For multi-species fisheries, Members can provide other relevant catch data.

Notification and Transparency

Members have obligations to notify fisheries-related information, including to invoke some exceptions.

[Article 8.1 bis

Members must notify non-specific fuel subsidies they grant or maintain or which their vessels use.]

Article 8.2 (ongoing)

Members must notify:

- Any lists of vessels they have determined were engaged in IUU
- **[Any vessels or operators a Member has information that suggests the use of forced labour]**
- Any fisheries access agreements, including:
 - Title, list of parties and – to the extent possible – the text of the agreement.

Articles 8.3, 8.4, 8.7 (at entry into force + any subsequent modifications)

Members must notify

- Measures taken to implement the agreement
- Description of its fisheries regime
- Any RFMOs they are party to, including RFMO decisions on stock status, IUU determinations, conservation and management measures.

**Article 10: Dispute
Settlement**

**Article 11: Final
Provisions**



Final Provisions

Additional horizontal and “savings” provisions.

Article 11.1

- Members exercise special care and due restraint when subsidising fishing of unassessed stocks

Article 11.2

- Exception from Article 5 for subsidies for disaster relief, as long as targeted, time limited and rebuilds fishery to its pre-disaster level.

[Article 11.3

- The instrument and any findings made under disputes under the Instrument, have no implications regarding territorial claims or maritime boundaries.
- Panels established to hear disputes under this Instrument shall not consider claims requiring decisions about contested territorial claims or maritime boundaries.]

Article 11.4, 11.5, 11.6

- Except as specifically agreed here, Members are not bound by decisions, and do not recognise, of RFMOs they are not party to.
- No impact on rights and obligations of Members under international law
- No impact on rights and obligations under ASCM

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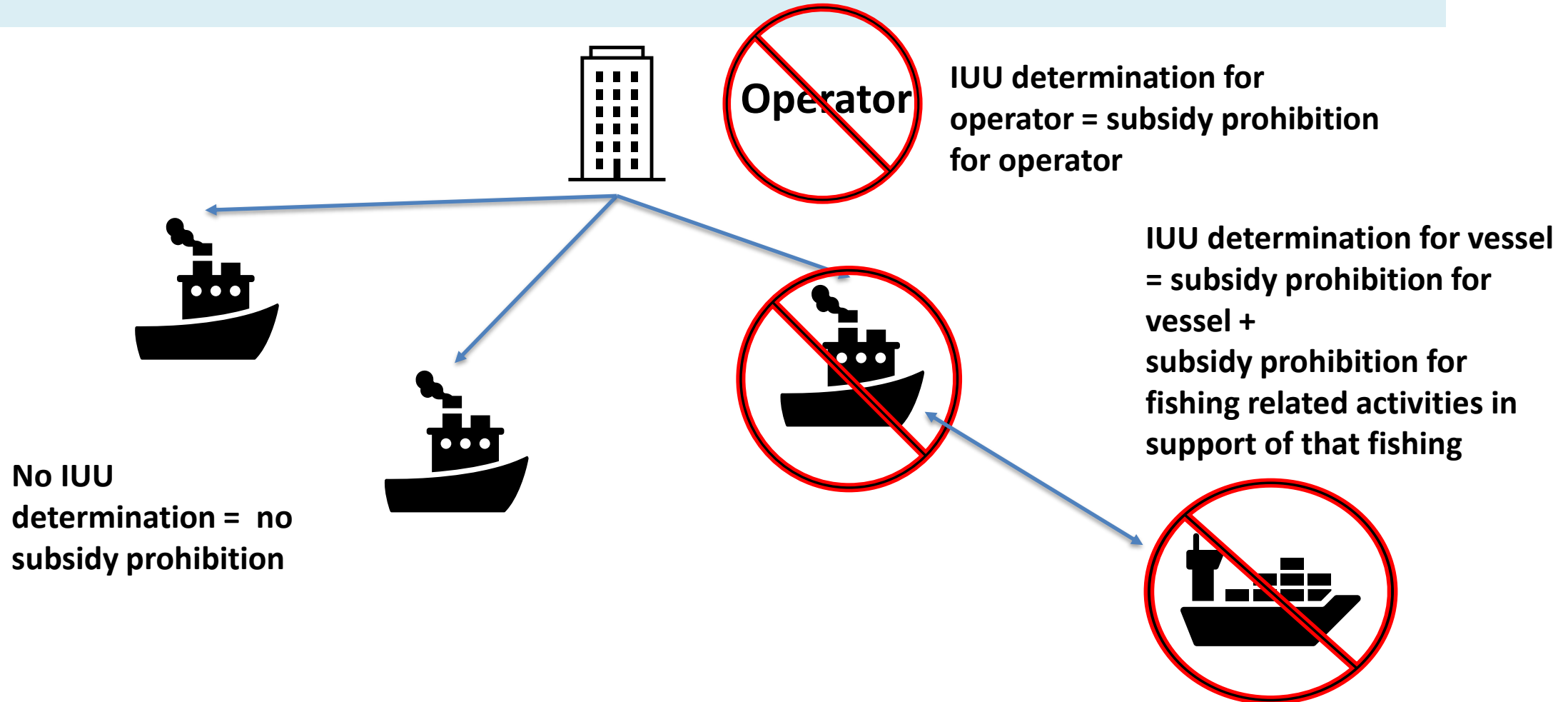
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Summary 1: Indicative scale of possible exceptions

Possible exception	% Global catch (tonnage) ²	% Global effort (kW day) ³	WTO-relevant subsidies ⁴
LDCs	6.8%	5%	1.7%
Artisanal (developing Members)	15% (Inshore: 10%)	34% - 45%	5.1%
EEZs (developing Members)	49.6%	61%	n/a
EEZs (developing Members <0.7% global catch)	~ 11% ⁵	16%	6%

² Data from Sea Around Us, University of British Columbia; ³ Data from Yannick Rousseau; ⁴ Data from Anna Schuhbauer; ⁵ Data from FAO

* The way 'artisanal' is defined varies between studies