Fisheries Subsidies Webinars

SESSION I
Walk Through the New Fisheries Subsidies Text

Wednesday 10 November | 2-3 p.m. CET
Agenda

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

14:30 – 14:55: Open discussion

14:55 – 15:00: Closing remarks
Caveats:

1) Presentation reflects our reading of the text as it currently stands
- Presentation reflects IISD’s reading of the Chair’s text of 8 November 2021 (TN/RL/W/276/Rev.2)
- 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 disagreement remain; some in square brackets, but also 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 obligation triggered by a determination of IUU fishing, subsidizer decides duration

**Article 3.1, 3.2**
- Subsidies prohibited for vessels and operators engaged in IUU fishing and fishing related activities in support of such fishing.
- 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 3.4**
- Subsidising Member can decide the duration of the prohibition, depending on the “nature, gravity and repetition” of the infraction.
- But the prohibition lasts as long as the sanction or listing remains in place.

**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 obligation triggered by a determination of IUU fishing, subsidizer decides duration

**Article 3.3 Alt 1**

Determinations by coastal state Members must be based on **positive evidence and follow due process**, providing the flag and subsidising Member, when known, with:

- **notification** of, of initiation of an investigation;

- **opportunity to submit information** to the investigation.

**Footnotes to note:**

FN7: Nothing in this Article shall be interpreted to delay or affect the validity of an IUU determination.

**Article 3.3 Alt 2**

Determinations by coastal state Members must provide to the flag and subsidising Member, when known:

- Timely **notification** that [a vessel or operator is detained for IUU fishing] or [initiation of an IUU investigation]; and

- An opportunity to **provide information**, including an opportunity to **dialogue** if requested.

- Coastal Member may specify manner and time period for information to be provided.
Article 4: Subsidies to Overfished Stocks
Overall approach: Most subsidies are prohibited for the fishing of overfished stocks

**Articles 4.1**
- Subsidies for fishing related to overfished stocks are prohibited.

**Articles 4.2 and 4.3**
- Stocks are overfished when national authority or RFMO/A recognizes it is overfished, based on the best scientific evidence available to that authority.
- Exception for subsidies implemented to promote the rebuilding of the overfished stock to a biologically sustainable level.
- [Exception for other subsidies if measures are implemented to promote the rebuilding of a stock.]

**Footnotes to note**
FN10: A biologically sustainable level is the level determined by the coastal Member..., using reference points such as MSY or other reference points, or by the relevant RFMO.
Subsidies to Overfished Stocks + SDT

Overall approach: Most subsidies are prohibited for the fishing of overfished stocks

Articles 4.1

- Subsidies for fishing related to overfished stocks are prohibited.

Articles 4.2 and 4.3

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

- Exception for subsidies implemented to promote the rebuilding of the overfished stock.

- [Exception for other subsidies if measures are implemented to promote the rebuilding of a 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…]

**Article 5.1.1**
- Unless a member can demonstrate it has measures implemented **to maintain stocks at a biologically sustainable level**, with flexibility on how such a level can be determined.
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
**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 Alt 1
[Exception from 5.1 continues to apply for an additional [X] years after an LDC graduates]

Article 6.2 Alt 2
[Provisions for LDCs apply for 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 subject to “endeavour to ensure” obligation.
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

Article 9: Institutional Arrangements
Notification and Transparency

Members have obligations to notify 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 [New 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 8.4**

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)

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)

[New FN 14: For multi-species fisheries, Members can provide other relevant catch data.]
Notification and Transparency - SDT

Members have binding or best-endeavour obligations to notify 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

b) Members should 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 8.4**

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 (5.5)

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 16, 17: Developing and LDC Members can provide the information required under 8.1 every 4 years.
Notification and Transparency

Members have obligations to notify information, including to invoke exceptions.

Article 8.2

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, text of agreement, amounts paid by government and by fleet, allowable catch, licences or capacity, list of authorised vessels)

Article 8.5

[Members must notify any RFMOs they are party to, including RFMO decisions on stock status, IUU determinations, conservation and management measures. Can be notified collectively, and also by providing links to relevant webpages.]
Institutional Arrangements

Overall approach: WTO Committee established to review notifications of information provided.

Article 9

Members must notify on entry into force:
- Implementation measures
- Description of fisheries management measures in place
Article 10: Dispute Settlement

Article 11: Final Provisions
Dispute Settlement and Final Provisions

Overall approach: WTO DSU, as applied to ASCM, applies to this agreement.

Article 11.1
- [Nothing in the Instrument affects the right of land-locked country Members.]

Article 11.2
- Members exercise special care and due restraint when subsidising fishing of unassessed stocks

Article 11.3
- Exception for subsidies for disaster relief, as long as targeted, time limited and rebuilds fishery to [a sustainable level] or its pre-disaster level.

Article 11.4
- 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 11.5
- Except as specifically agreed here, Members are not bound by decisions, and do not recognise, of RFMOs they are not party to.
Balances between Provisions
# Balances between provisions

<table>
<thead>
<tr>
<th>IUU</th>
<th>Automaticity plus minimum duration</th>
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<tbody>
<tr>
<td>Overfished stocks</td>
<td>Strict prohibition + exception for rebuilding subsidies</td>
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<tr>
<td><strong>OCOF</strong></td>
<td><strong>OCCF S&amp;DT</strong></td>
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<tr>
<td>5.1 presumption + list (including “contingent on”)</td>
<td>5.1.1 qualification of 5.1 for management measures</td>
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<tr>
<td>5.2 and 5.3</td>
<td>Artisanal fishing (12nm or 200?)</td>
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<tr>
<td></td>
<td>Non-artisanal fishing (200nm + RFMOs?) (how long?)</td>
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<tr>
<td>De-minimis Members (0.7%)?</td>
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<tr>
<td><strong>Notification and transparency</strong></td>
<td><strong>Due process or procedure?</strong></td>
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<tr>
<td>Article 8.1 a)</td>
<td></td>
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<tr>
<td>Article 8.1 b)</td>
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SESSION 1
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Subsidies to IUU Fishing

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

- No IUU determination = no subsidy prohibition
- IUU determination for operator = subsidy prohibition for operator
- IUU determination for fishing vessel = subsidy prohibition for vessel [+ subsidy prohibition for fishing related activities in support of that fishing?]
- Is an IUU determination for a fishing-related vessel required for the subsidy prohibition to apply to that fishing-related vessel?
## Summary 1: Indicative scale of possible exceptions

<table>
<thead>
<tr>
<th>Possible exception</th>
<th>% Global catch (tonnage)²</th>
<th>% Global effort (kW day)³</th>
<th>WTO-relevant subsidies⁴</th>
</tr>
</thead>
<tbody>
<tr>
<td>LDCs</td>
<td>6.8%</td>
<td>5%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Artisanal (developing Members)</td>
<td>15% (Inshore: 10%)</td>
<td>34% - 45%</td>
<td>5.1%</td>
</tr>
<tr>
<td>EEZs (developing Members)</td>
<td>49.6%</td>
<td>61%</td>
<td>n/a</td>
</tr>
<tr>
<td>EEZs (developing Members &lt;0.7% global catch)</td>
<td>~ 11%⁵</td>
<td>16%</td>
<td>n/a</td>
</tr>
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</table>

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