

An aerial photograph of a red fishing boat in the middle of a large-scale fishing operation. The boat is surrounded by a vast, circular green fishing net that has been cast into the dark blue water. The net is held up by several white floats. The boat is equipped with various fishing gear, including blue buckets, ropes, and a blue tarp. The scene is captured from a high angle, looking down at the boat and the net. The water is a deep, dark blue, and the net is a vibrant green. The overall composition is framed by a large white circular arc on the right side.

GUIDEBOOK

Self-Assessment Tool for the Implementation of the WTO Fisheries Subsidies Agreement



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Head Office

111 Lombard Avenue,
Suite 325
Winnipeg, Manitoba
Canada R3B 0T4

Tel: +1 (204) 958-7700

Website: www.iisd.org

Twitter: [@IISD_news](https://twitter.com/IISD_news)



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Abbreviations and Acronyms

ASFIS	Aquatic Sciences and Fisheries Information System
EEZ	exclusive economic zone
FAO	Food and Agriculture Organization of the United Nations
FSA	Fisheries Subsidies Agreement
GATT	General Agreement on Tariffs and Trade
GT	gross tonnage
IISD	International Institute for Sustainable Development
IUU	illegal, unregulated, or unreported
LDC	least developed country
MSY	maximum sustainable yield
OECD	Organisation for Economic Co-operation and Development
RFMO/A	Regional Fisheries Management Organization or Arrangement
S&D	special and differential treatment
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SCM Committee	Committee on Subsidies and Countervailing Measures
WTO	World Trade Organization

1.0 Introduction





1.1 How to Use This Tool

About This Tool

The Self-Assessment Tool for the Implementation of the World Trade Organization (WTO) Fisheries Subsidies Agreement (“Tool”) is composed of two separate documents: (1) the Checklist ([available here](#)), which is the main document, and (2) the Guide (this document). Both documents have been developed to assist public officials in WTO Member countries in preparing and coordinating the implementation of the WTO Fisheries Subsidies Agreement (FSA). The Tool may be of particular use for developing country and least developed country (LDC) Members, but can be used by any WTO Member.

The Tool has been designed to help WTO Members in:

- Identifying and collecting **key information and data** needed for implementation of the FSA.
- Understanding the requirements under the different provisions of the FSA, evaluating their **current alignment** with those requirements, and identify any immediate corrective action needed to align with the requirements.
- Assessing whether the required mechanisms are in place domestically to enable **ongoing alignment** with the FSA’s requirements and, if not, identify implementation gaps.
- Articulating possible **technical assistance and capacity building** needs.

The Checklist consists of a series of tables to be completed by WTO Members. The tables fall under four different categories: (1) inventory tables to collect key information about domestic fisheries subsidies, subsidised fleets, fish stocks, and illegal, unreported, and unregulated (IUU) fishing determinations; (2) current alignment tables to determine the Member’s existing level of alignment with the FSA’s requirements; (3) ongoing alignment tables to allow the determination of steps that must be taken to enable ongoing alignment with the new rules and identify any technical assistance and capacity building needs; and (4) a notification and information provision table setting out matters that need to be notified or provided to the WTO and the timelines for doing so.

This Guide has been designed to assist public officials in completing the Checklist’s tables. It is first and foremost a supporting document to the Checklist, which should be used if and when useful. The two documents are thus meant to be used together. The Guide provides context and explanations to help users understand the legal obligations stemming from the FSA and the practical requirements for implementation. Most importantly, it explains in a detailed way how the various questions in the tables need to be answered. Note that the Checklist’s tables are not reproduced in the Guide, which means that this Guide needs to be used alongside the Checklist.



i Important note: This Tool is designed to assist WTO Members, particularly developing country and LDC Members, in understanding and implementing the FSA. It seeks to explain FSA requirements in an objective way, but some level of interpretation is inevitable. The Guide and Checklist should *not* be taken as legal advice on the part of IISD regarding any specific measure's consistency with a Member's obligations under the agreement. Nor should they be interpreted as requiring a particular method of implementation. The specific situation of each WTO Member and each subsidy program should be considered on an individual basis. Members will need to determine individually what is the best way to adhere to the obligations of the FSA in their own domestic context.

It is also important to note that the Checklist and Guide are meant to be used internally within the Member's administration. It is a confidential tool to assist officials in determining obligations, the extent to which policy is aligned with those obligations, what is needed to align policy with the obligations, and where technical assistance and capacity building may be required to help the Member align policy with its obligations. The Checklist's tables, when filled, are not meant to be notified to the Committee or shared with any WTO Member, or with the International Institute for Sustainable Development (IISD), unless by the choice of the Member that has gone through this exercise.

Collecting Necessary Information and Data

After an introductory section explaining the negotiating mandate and rationale for fisheries subsidies disciplines as well as the general content of the FSA, the Guide starts with an explanation of how to complete a series of inventory tables found at the beginning of the Checklist in Section 2. These tables have been developed to guide the collection of key information and data needed to assess a Member's level of alignment with its legal obligations under the Agreement and take implementation steps to enable ongoing alignment. There are five inventory tables that should be filled out with as much information as is available on:

1. Domestic fisheries subsidies that fall within the scope of the FSA.
2. Subsidised fisheries, including information on fleets and an identification of relevant fish stocks (+ an additional table on catch data).
3. The status of fish stocks exploited by domestic subsidised fleets and relevant fisheries management measures.
4. Determinations of IUU fishing made about domestic vessels or operators, or by domestic authorities.
5. The government's capacity to collect the information needed for the four inventory tables above.

Not all WTO Members will have all this information available, and many will have it in different formats. The tables are structured to help officials identify the information that is needed to assess alignment with the FSA and implement it, but they are not meant to be



prescriptive. The tables can and should be used to record whatever information is available, at the level of detail that is deemed needed by the government officials filling them in.

Important note: These tables can be used on an ongoing basis to record and communicate with relevant authorities information that is key to the ongoing implementation of the FSA.

Assessing Current Alignment, Mechanisms for Ongoing Alignment, and Technical Assistance Needs

The remaining—and the main—part of the Guide is structured around the various disciplines included in the FSA, a copy of which is provided in Annex 1. The Checklist and the Guide are focused on legal obligations for WTO Members under the Agreement. These obligations are found in several provisions that require WTO Members to take (or not to take) certain actions to align with the Agreement. At the beginning of each section, a short introduction highlights the obligations that are addressed in that given section.

The Checklist and the Guide address each of these obligations in turn, grouping them in sections that are structured per article. For each obligation, the Guide starts by reproducing the relevant legal provisions and providing a clear and concise overview of what they require WTO Members to do or refrain from doing. The Guide then considers each obligation in two steps, assisting you, the user, in filling out two separate tables included in the Checklist by providing detailed explanations:

1. The first table for each obligation helps to assess your government's level of **current alignment** with that obligation and identify corrective actions in case of non-alignment (“current alignment table”).
2. The second table helps to determine whether the necessary domestic mechanisms are in place to enable **ongoing alignment** with the obligation, identify implementation gaps, and articulate any technical assistance and capacity building needs (“ongoing alignment table”).

Unlike the sections covering other obligations, Section 6 and Section 7 do not include any table because the obligations they cover (those found in Articles 6 and 7 of the FSA) are of a somewhat broader and more diffuse nature. This means that these more general obligations are not covered in the Checklist, but they are explained in the relevant sections in the Guide.

Current Alignment

The current alignment tables in the Checklist allow the assessment of your government's current degree of alignment with its legal obligations under the FSA (e.g., is your government currently providing any subsidy that is prohibited under one of the FSA's disciplines?). For each obligation, the current alignment table includes a series of questions that will need to be answered to make such an assessment. The Guide provides guidance and explanations on how to understand and answer these questions. Based on the answers provided, the table allows the determination of whether your government is currently aligned with a particular obligation or whether any further action is required to align with such obligation. Current alignment tables



also address the flexibilities available to WTO Members under the respective obligations they relate to, including special and differential provisions for developing country Members.

Current alignment tables are thus meant to provide a snapshot of a Member's current alignment status at the time the self-assessment is undertaken. In cases where non-alignment is identified, the tables also suggest corrective action to undertake, which are further explained in the Guide. It is possible that, for some obligations, the information available will not be sufficient to provide a clear conclusion. In such cases, the alignment status will be unknown, and additional information will be needed if the Member wants to complete the assessment.

Table 1 shows a template current alignment table, and it is followed by a short explanation of the role of the different columns found in such tables. Note that the only columns that you will need to fill are the columns "Relevant information" and "Yes/No/Unknown."

Table 1. Template current alignment table

Considerations	Article	Question	Information required	Relevant information	Yes/No/Unknown	Further actions

The "Consideration" column indicates what a question or set of questions relates to (for example, the obligation not to provide subsidies to IUU fishing). It gives a short and concise indication of what issue is addressed by particular questions.

The "Article" column indicates the relevant Article, paragraph or subparagraph of an Article of the FSA being addressed by a question or set of questions.

The "Question" column includes the questions to be answered to determine whether your government is currently aligned with an obligation. All questions in the column are sequentially numbered. Some questions are grouped together, reflecting that in some cases, answering a set of questions is required to assess current alignment with a given obligation, or with a particular requirement under a given obligation. In this Guide, any time a specific question is mentioned when providing explanations on a given table, reference will be made to the number of the specific question.

The "Information required" column indicates the information needed to reply to a particular question. It often refers to the information collected in the inventory tables in Section 2, but if such tables have not been filled, equivalent information collected in another way may also be used. The column also indicates in a concise way what needs to be checked, based on such information, to answer the question.

The "Relevant information" column can be used to record any useful information related to the response to a particular question. This information could be used to provide some context or detail on a specific response to that question. It provides an opportunity to keep a record of the reason why a particular answer was given, which will be particularly useful in identified cases of non-alignment, as it can then inform the corrective actions to be taken to achieve alignment.



The “Yes/No/Unknown” column is where the answer to a particular question needs to be provided. Each question will have a corresponding cell in the “Yes/No/Unknown” column, which requires a simple “Yes” or “No” answer to the question in the “Question” column. It is this answer, sometimes together with answers provided to other questions, that will determine whether any action needs to be taken to achieve alignment in the context of a particular question (as indicated in the “Further actions” column). Where a clear “Yes” or “No” answer cannot be provided based on the available information, this can be indicated by answering “Unknown.” In such cases, there will be uncertainty about current alignment with the obligation the question relates to, and additional information will be needed to complete a full assessment.

The “Further actions” column indicates whether the action or step needs to be taken based on the answer given in the “Yes/No/Unknown” column. It may simply indicate what action must be taken to achieve alignment with a particular obligation, or a part of that obligation—e.g., if “Yes,” the relevant subsidies must be removed, and if “No,” there is no further action that needs to be taken in the context of this question. In some cases, the information provided in that column will rather give an indication to move to another question—e.g., if “Yes,” move to question X”—because assessing current alignment with the relevant obligation requires a response to an additional question. Finally, the column will also indicate when, based on the answer that was given in the Yes/No/Unknown” column, some of the following questions can be skipped.

Ongoing Alignment

While current alignment tables provide an instantaneous snapshot of your government’s current level of alignment with the FSA’s disciplines (e.g., is your government currently providing any subsidy that is prohibited under the FSA?), ongoing alignment tables have a different purpose. These tables are meant to guide an assessment of whether the required mechanisms are in place domestically to enable ongoing alignment with the FSA’s requirements. In other words, these tables are about the systems that need to be in place—be it through laws, regulations, procedures, information-gathering processes, and/or communication mechanisms—to enable ongoing alignment with the new obligations (e.g., does the system in place operate so that no prohibited subsidy can be provided?).

As with current alignment tables, you will need to answer a number of questions, assisted by the Guide’s explanations if needed. This exercise will allow you to identify possible implementation gaps and actions that need to be taken by your authorities to enable ongoing alignment with the FSA’s requirements. Ongoing alignment tables also allow you to indicate whether your government’s existing resources are sufficient to take such implementation steps and, if that is not the case, articulating specific needs for technical assistance and capacity building to enable your authorities to do so.

Table 2 shows a template for the ongoing alignment tables, and it is followed by a short explanation of the role of the different columns found in such tables. You will need to fill in all the columns except the “Consideration” and “Question” columns.

**Table 2.** Template ongoing alignment table

Consideration	Question	Yes/No/ Unknown	Short description	Actions required to enable ongoing alignment	Technical assistance and capacity building needs

The “Consideration” column indicates what a question, or a set of questions, relates to (for example, IUU determinations by domestic authorities). It gives a short and concise indication of what issue is addressed by particular questions.

The “Question” column includes the questions to be answered to determine whether the required mechanisms are in place domestically to enable ongoing alignment with an obligation. All questions in the column are sequentially numbered. Some questions are grouped together, in particular if they address different aspects of the same type of situation. In this Guide, any time a specific question is mentioned when providing explanations on a given table, reference is made to the number of the specific question.

The “Yes/No/Unknown” column is where the answer to a particular question needs to be provided. It requires a simple “Yes” or “No” answer to the question in the “Question” column. Where a clear “Yes” or “No” answer cannot be provided based on the available information, this can be indicated by answering “Unknown.” In such cases, there will be uncertainty about the existence of the required mechanisms to enable ongoing alignment with the obligation the question relates to, and additional information will be needed to complete a full assessment.

For each question, the column “Short description” needs to be filled with information about the current domestic situation with regard to the mechanism the question refers to. The information should thus briefly explain why a particular answer was given in the column “Yes/No/Unknown.” In each cell of that column, guidance is provided regarding the information that should be provided in such cell (for example, “Describe existing procedures to ensure communication among relevant domestic authorities in case of an overfished stock”).

The column “Actions required to enable ongoing alignment” needs to be filled in if the mechanism the question refers to is not in place, that is, if you answered “No” in the “Yes/No/Unknown” column. In such cases, indicate in this column the steps that need to be taken to address that gap and establish such mechanism (for example, establishing a communication mechanism to inform the relevant authorities that provide subsidies any time a stock is recognised as overfished). Information in the column “Short description” can inform your answer to that question.

The column “Technical assistance and capacity building needs” also needs to be filled only in situations where the mechanism the question refers to is not in place. In such cases, you will need to assess whether your authorities have the ability and resources to implement the actions identified in the column “Actions required to enable ongoing alignment.” If that is not the case, you should indicate in this column what kind of technical assistance and capacity building would be needed by your authorities, providing as much detail as possible. The



precise identification of these needs may then allow your authorities to communicate such needs in a clear and compelling way to possible assistance providers and donors, if they decide to do so.

Finally, two of the tables included in the Checklist have some particularities that are briefly mentioned in this paragraph. First, Table 3.3 is both a current alignment table and an ongoing alignment table. This simply means that this table includes columns from both types of table. Second, Table 8.C is neither a current alignment table nor an ongoing alignment table. Rather, this table provides a summary of the various notification and information provision requirements included in the FSA, including the relevant time frame for each requirement. As such, this table provides an additional tool to assist government officials from WTO Members in understanding and giving effect to such transparency requirements.

Practical Tips

When using the Tool, proceed through the Checklist's tables section by section, starting with the section dealing with inventory tables (Section 2). This section is important because it allows the collection of information and data that will be useful to conduct the "current alignment" and "ongoing alignment" assessments for the legal obligations established by the FSA, which are addressed in dedicated tables in the next sections. Start by reading and filling each inventory table included at the beginning of the Checklist, using the additional explanations provided in the Guide for each inventory table wherever this is useful or necessary. Collect as much information as possible and record it in these inventory tables.

Once these inventory tables are completed, move to the following sections related to specific legal obligations. If needed, consult the corresponding sections of the Guide, which will provide the relevant legal provisions, a summary box at the beginning of the section or subsection dealing with a specific obligation, as well as explanations on how to answer the specific questions found in the tables. The full text of the FSA, provided as Annex 1 to this Guide, also allows users to look at specific provisions within the full context of the Agreement.

When answering the questions in the Checklist regarding legal obligations (Sections 3, 4, 5 and 8), start with the "current alignment" table for each obligation and continue with the "ongoing alignment" table. If necessary, the Guide will help you to navigate through these tables, with relevant information and explanation for each obligation and each specific question found in the tables. Some sections of the Guide (Sections 6 and 7) focus on parts of the FSA that include obligations of a somewhat broader nature, which are not addressed in specific tables in the Checklist, but for which the Guide provides explanations.

In filling out the Checklist's tables, provide as much detail as possible. Such detail will help you in understanding the domestic situation as thoroughly as possible to assess alignment with the FSA's disciplines and identify possible implementation gaps. Detailed information will also help you to identify the type and scale of the technical assistance and capacity building that may be useful to domestic authorities for implementing the Agreement. Being able to articulate such needs in a clear and specific way can also assist developing country and LDC WTO Members in approaching donor countries and assistance providers and securing their support.



1.2 Introduction to the FSA

The Negotiating Mandate

The WTO negotiations aimed at disciplining fisheries subsidies were based on a 2001 mandate in the Doha Ministerial Declaration, supplemented by a more detailed one agreed at the 2005 Hong Kong ministerial conference instructing WTO Members to “strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing.” Members also agreed that “appropriate and effective special and differential treatment (S&D) for developing and least developed Members should be an integral part of the negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns.”

In 2015, following several years of stalled talks in the WTO, the momentum for new disciplines grew again as several delegations identified fisheries subsidies as one of the areas where progress could be achieved under the Doha Development Agenda. The same year, United Nations (UN) Members adopted Sustainable Development Goal target 14.6, calling for the prohibition, by 2020, of certain forms of fisheries subsidies that contribute to overcapacity and overfishing and the elimination of subsidies that contribute to IUU fishing. After a failed attempt to reach an agreement at the Buenos Aires WTO Ministerial in 2017, Ministers agreed to conclude the talks by the 12th WTO Ministerial Conference originally scheduled for 2019 but ultimately postponed to June 2022 due to the COVID-19 pandemic. The FSA agreed at the 12th WTO Ministerial Conference is thus the culmination of more than two decades of negotiations between WTO Members to give effect to the original 2001 and 2005 mandates and Sustainable Development Goal target 14.6.

The Rationale for Fisheries Subsidy Disciplines

Contrary to other WTO agreements, the main rationale for enhanced international disciplines on fisheries subsidies is not a commercial one. It stems from the recognition that certain forms of subsidies incentivise fishing beyond sustainable levels by artificially reducing the cost of fishing operations or enhancing revenues.¹ In a world where fisheries management measures often remain ineffective at regulating access to common fisheries resources, such subsidies exacerbate the risk of overfishing, including as a result of IUU fishing, and ultimately threaten the sustainability of fish stocks with adverse socio-economic consequences for the many people and coastal communities whose lives and well-being depend on fishing.

According to the World Bank, the global fishing fleet is significantly overcapitalised, and a decrease of 44% of global fishing effort relative to the 2012 level would be needed for the

¹ For further information on the impact of fisheries subsidies, see for example, OECD. (2017). *Support to fisheries: Levels and impacts* (OECD Food, Agriculture and Fisheries Papers, No. 103). <http://dx.doi.org/10.1787/00287855-en>; von Moltke, A. (Ed.). (2011). *Fisheries subsidies, sustainable development and the WTO*. United Nations Environment Programme; or Martini, R. & Innes, J. (2018). *Relative Effects of fisheries support policies* (OECD Food, Agriculture and Fisheries Papers, No. 115). OECD Publishing. <http://dx.doi.org/10.1787/bd9b0dc3-en>



marine fisheries sector to achieve its maximum economic potential.² The productivity of the sector has also been continuously declining, with some studies suggesting that, in most countries of the world, the effective catch per unit of effort (which is often used as an indicator of such productivity) has declined by 80% since 1950. Another facet of the same phenomenon is reflected in the evolution of the state of global fish stocks, which has substantially worsened in the last half century. While around 10% of assessed marine fish stocks were considered to be overfished in 1974, the UN Food and Agriculture Organization's (FAO's) latest data indicates that this share has more than tripled, reaching 35.4% in 2019.³ This unsustainable exploitation of marine resources not only undermines the health of marine ecosystems, but it also threatens the ability of the fisheries sector to support employment, livelihoods, and food security across the world.

It has been estimated that global fisheries subsidies amounted to approximately USD 35 billion in 2018, of which around USD 22 billion relates to capacity-enhancing subsidies—that is, subsidies that tend to increase the capacity of fishing fleets.⁴ Such subsidies often contribute to keeping otherwise unprofitable fishing fleets at sea, putting additional pressure on fish stocks whose exploitation would not be economically viable under normal economic conditions.⁵ Fuel subsidies are the most important category of support globally, accounting for 22% of all fisheries subsidies. They are followed by fisheries management subsidies and non-fuel tax exemptions, which account for 19% and 15% of the total, respectively.⁶ Based on the same data, it has been estimated that 81% of fisheries subsidies are provided to large-scale industrial fleets and 19% to small-scale fishers, also raising questions about equity regarding how different types of actors are able to access such government support.⁷

The Three Pillars Addressed by the FSA

The FSA does not apply to all fisheries subsidies. Its overall scope is limited to subsidies that are provided to marine wild capture fishing and fishing-related activities at sea, which means that subsidies for activities such as aquaculture and land-based processing are not covered. Within that scope, the Agreement essentially addresses subsidies in three distinct areas, namely (1) subsidies contributing to IUU; (2) subsidies regarding overfished stocks; and (3) other subsidies. The latter include subsidies in three types of situations, when fishing and

² See World Bank. (2015). *The sunken billions revisited: Progress and challenges in global marine fisheries*. <https://www.worldbank.org/en/topic/environment/brief/the-sunken-billions-revisited-progress-and-challenges-in-global-marine-fisheries>.

³ See FAO. (2022). *The state of world fisheries and aquaculture 2020. Towards blue transformation*. <https://doi.org/10.4060/cc0461en>

⁴ See Sumaila, U. R., Ebrahim, N., Schuhbauer, A., Skerritt, D. J., Li, Y., Kim, H. S., Mallory, T. G., Lam, V.W.L., & Pauly, D. (2019). Updated estimates and analysis of global fisheries subsidies. *Marine Policy*, 109. <https://doi.org/10.1016/j.marpol.2019.103695>

⁵ See Sala, E., Mayorga, J., Costello, C., Kroodsma, D., Palomares, M. L. D., Pauly, D., Sumaila, R., & Zeller, D. (2018). The economics of fishing the high seas. *Science Advances*, 4(6), <https://doi.org/10.1126/sciadv.aat2504>

⁶ See Sumaila et al. (2019).

⁷ Based on data published in Schuhbauer, A., Skerritt, D. J., Ebrahim, N., Le Manach, F., & Sumaila, U. R. (2020). The global fisheries subsidies divide between small- and large-scale fisheries. *Frontiers in Marine Science*. <https://www.frontiersin.org/articles/10.3389/fmars.2020.539214/full#supplementary-material>



fishing-related activities: (a) occur on the high seas and do not fall under the management competence of a regional fisheries management organisation or arrangement (RFMO/A); (b) are undertaken by vessels that do not fly the subsidizing Member's flag; and (c) concern stocks the status of which is unknown.

IUU Fishing

The first substantive area of disciplines under the FSA relates to the subsidies that contribute to IUU fishing (Article 3 of the FSA). IUU fishing essentially refers to fishing activities that are in breach of national laws and regulations or international obligations that govern the management of fisheries and conservation of fish stocks.⁸ IUU fishing has been estimated to result in global economic losses that could be as high as USD 50 billion each year,⁹ and it remains, according to the FAO, one of the greatest threats to marine ecosystems, which undermines national and regional efforts to manage fisheries sustainably.¹⁰ IUU fishing is often the outcome of a lack of capacity or resources to establish and enforce effective fisheries management regimes, including through adequate monitoring, control, and surveillance. By undermining the sustainability of marine resources, IUU fishing can put fisheries at risk of collapse and jeopardise the livelihoods of local fishers, particularly small-scale fishers in developing countries. It can also divert marine resources to foreign markets and negatively affect local food security by throttling local food supply.¹¹

The 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing provides the basis of the international policy response to the problem. It describes the nature and scope of IUU fishing and sets objectives, principles, and measures to prevent, deter, and eliminate IUU fishing. The framework covers general state responsibilities, flag State responsibilities, measures taken by coastal States and port State measures, and internationally agreed market-related measures. In particular, it calls on all states to avoid providing subsidies or other form of economic support to actors (companies, vessels, or persons) engaged in IUU fishing activities. While in most cases governments do not knowingly subsidise IUU fishing, there are documented cases of subsidies directly associated with IUU fishing activities.¹² To address this issue, Article 3 of the FSA includes a prohibition to subsidise vessels or operators found to have engaged in IUU fishing.

Overfished Stocks

The second substantive area addressed in the FSA's disciplines on fisheries subsidies relates to the subsidies that are provided to fishing and fishing-related activities regarding stocks that are considered to be overfished (Article 4 of the FSA). While there is no internationally agreed definition of what an "overfished stock" is, it generally means that a fish stock has been

⁸ For a more detailed description of IUU fishing, see paragraph 3 of the FAO's International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing.

⁹ Sumaila, U. R., Zeller, D., Hood, L., Palomares, M. L. D., Li, Y., & Pauly, D. (2020). Illicit trade in marine fish catch and its effects on ecosystems and people worldwide. *Science Advances*, 6(9), Article eaz3801. <https://www.science.org/doi/10.1126/sciadv.aaz3801>

¹⁰ See FAO. (2016). *Illegal, unreported and unregulated fishing*. <http://www.fao.org/3/a-i6069e.pdf>

¹¹ <http://www.fao.org/iuu-fishing/en/>

¹² See for example: Oceana (2007).



“exploited beyond an explicit limit beyond which its abundance is considered ‘too low’ to ensure safe reproduction.”¹³ To determine that “limit,” the concept of maximum sustainable yield (MSY) is often used, and the level of biomass that can produce MSY (or a proportion of that level) is defined as the signpost below which a stock is determined to be overfished. Importantly, other reference points (not based on MSY) can also be used to determine the status of a stock.

Stock status is determined through stocks assessments, which can use more or less sophisticated methods depending on the nature of the data and resources available. Such assessments are typically done or commissioned by the national authorities of the country in whose EEZ a given stock lives, sometimes with the support of cooperation partners. In the case of straddling and highly migratory stocks, the monitoring and assessment of stocks require international cooperation, which is often done through RFMO/As. The FSA defines a biologically sustainable level as

the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing-related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.¹⁴

Overfished stocks are considered to be in a concerning situation from a sustainability perspective and, as a result, are particularly vulnerable to the effects of fisheries subsidies. In this area, Article 4 of the FSA includes a prohibition to subsidise the fishing (and related activities) of stocks that are recognised as overfished by a coastal Member or an RFMO/A, except if the subsidies themselves or other types of measures are implemented to rebuild the relevant stocks to a biologically sustainable level.

Other Subsidies

The third substantive area of the FSA’s disciplines includes three rules (one prohibition and two due restraint provisions) that apply to subsidies provided in three distinct types of situations. They are grouped under the heading “other subsidies” in Article 5 of the Agreement.

The first rule relates to subsidies provided to fishing and fishing-related activities that occur on the high seas, but outside the competence of any relevant RFMO/A (Article 5.1 of the FSA). On the high seas, where no state has jurisdiction to regulate fishing on its own, fisheries management must occur through international cooperation, which has led to the creation of a number of RFMO/As. In practice, however, the management mandates of such institutions only cover certain areas and certain species, and some of the marine resources fished on the high seas do not fall under the competence of any RFMO/As. This rule thus addresses subsidies provided for activities that cannot be subject to any effective and sustainable management of fisheries resources, simply because no cooperative management regime

¹³ FAO (n.d.), entry “overfished.”

¹⁴ Footnote 11 to the FSA.



currently exists. For this reason, such subsidies are particularly risky from a sustainability perspective and are prohibited under Article 5.1.

The second rule in Article 5 relates to subsidies provided to fishing and fishing-related activities that are undertaken by vessels that do not fly the flag of the subsidizing Member (Article 5.2). Different countries have different rules applying to the registration of vessels. While in some countries, only ships that have ties to the country (ownership or crewing) can be registered, in others, vessels can fly their flag even if they are controlled or owned by foreign companies (so-called “open registries”). This can lead to situations where subsidies are provided by a Member to a vessel that flies the flag of another country, and where the subsidizing Member has no sort of jurisdiction or control over this vessel’s activities if such vessel conducts its fishing or fishing-related activities outside of the subsidizing Member’s waters. In this area, Article 5.2 establishes an obligation on Members to take special care and exercise due restraint when they subsidise vessels that do not fly their flag.

The third and last rule in Article 5 addresses subsidies provided to fishing and fishing-related activities regarding stocks, the status of which is unknown (Article 5.3). Knowing the status of a stock is a necessary condition for managing its exploitation in a sustainable way. Without such information, fisheries management authorities and organisations do not have the necessary information to determine how much of that stock can be caught sustainably and implement an appropriate management plan, which makes it particularly risky to incentivise increased fishing effort through subsidies. Article 5.3 thus requires Members to take special care and exercise due restraint when providing subsidies to activities regarding stocks for which no stock status information is available.

2.0

Inventory of Subsidies and Fishing and Fishing-Related Activities





This section provides explanations of the relevance of a series of inventory tables included at the beginning of the Self-Assessment Checklist as well as guidance on how to fill out the tables. These tables will help to collect key information and data needed to assess the government's compliance level with the legal obligations under the FSA and take implementation steps to enable ongoing compliance. These tables should be filled out, as far as is possible, with information and data on:

- The subsidies provided by domestic authorities that fall within the scope of the FSA (Table 2.1).
- The fisheries to which those subsidies are applied, including information on subsidised fleets and the stocks they fish (Tables 2.2.A and 2.2.B).
- The status of the fish stocks in these fisheries (Table 2.3).
- All determinations of IUU fishing activities that involve vessels or operators that may be receiving the subsidies identified in Table 2.1, as well as IUU determinations made by domestic authorities (Table 2.4).

This section also explains how to fill out a related “Data collection” table (Table 2.5). This table summarises the availability of the information needed to complete Tables 2.1 to 2.4, as well as the presence of mechanisms to collect such information on an ongoing basis, and enables the articulation of technical assistance needs where gaps are identified.

2.1 List of Relevant Fisheries Subsidies

Summary box

Table 2.1 allows the listing of all “specific” fisheries subsidies that are provided to marine wild capture fishing and fishing-related activities at sea and the collection of information on such subsidies. For each subsidy, the information requirements include the subsidy's name, the authority responsible for it, the subsidy's form and type, a short description, and its total or annual value and duration. The table also requires indicating if the subsidy meets either of two specific criteria, each of which will allow determining whether the subsidy qualifies for a particular exemption to the FSA's rules.

Scope and Objective of Table 2.1

The objective of Table 2.1 is to collect information on all subsidy programmes of the Member that fall within the scope of the FSA. Once completed, this table will provide an understanding of all the Member's measures that may be disciplined under specific rules. Completing the table will also help in preparing notifications of fisheries subsidies to the Committee on Subsidies and Countervailing Measures (SCM Committee).

For each relevant subsidy, the table allows to collect information on the name of the programme, the authority responsible for it, the subsidy's form and type, a short description (including its objective, who the recipients are, and how it is provided), the amount of the



subsidy and its duration. In addition, the table requires indicating whether the subsidy meets two specific criteria related to some of the provisions in the FSA by ticking the appropriate boxes. This will allow determining whether the subsidy is covered by two particular exemptions to the rules contained in the FSA and may thus continue to be provided.

Article 1 of the FSA provides that the Agreement “applies to subsidies, within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing-related activities at sea.” It is, therefore, important to understand how a subsidy is defined in Article 1.1 of the SCM Agreement, which provides as follows:

For the purpose of this Agreement, a subsidy shall be deemed to exist if:

- (a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e., where:
- (i) a government practice involves a direct transfer of funds (e.g., grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g., loan guarantees);
 - (ii) government revenue that is otherwise due is foregone or not collected (e.g., fiscal incentives such as tax credits)¹;
 - (iii) a government provides goods or services other than general infrastructure, or purchases goods;
 - (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;
- or
- (a)(2) there is any form of income or price support in the sense of Article XVI of [General Agreement on Tariffs and Trade] GATT 1994;
- and
- (b) a benefit is thereby conferred.

¹ In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

In essence, based on this definition, a subsidy is a financial contribution (which can take various forms) by a government, or income or price support, that confers a benefit. A subsidy can be provided by a government at the central, regional, or local level, but also by any “public body” within the territory of a Member. In this context, a public body means an entity that possesses, exercises, or is vested with governmental authority (for example, certain state-



owned commercial banks).¹⁵ The definition of subsidy also includes support from any private body entrusted or directed by government to provide a financial contribution, but does not include general infrastructure, understood as infrastructure intended for public use, as opposed to use by a particular industry.

It should be noted that not all transfers of funds from a government or provision of goods and services by a government are regarded as subsidies because in some cases there is no “benefit” conferred through the financial contribution. For a benefit to exist, WTO case law indicates that in addition to the government providing a financial contribution, the financial contribution must have made “the recipient ‘better off’ than it would otherwise have been, absent that contribution.”¹⁶ Case law also explains that “a financial contribution will only confer a ‘benefit,’ i.e., an advantage, if it is provided on terms that are more advantageous than those that would have been available to the recipient on the market.”¹⁷ Whether or not there is a benefit must thus be determined on the basis of market principles.¹⁸ Finally, the amount of subsidy must be calculated following the guidelines set forth in Article 14 of the SCM Agreement.

Article 1 of the FSA specifies that the Agreement applies to subsidies that are “specific” within the meaning of Article 2 of the SCM Agreement. Under Article 2 of the SCM Agreement, a subsidy is considered to be specific if access to the subsidy is restricted to certain enterprises or industries, or groups of enterprises or industries, either by law (that is, the restriction to certain enterprises is stated explicitly in the legislation) or in fact (for example, when disproportionately large amounts of subsidy are granted to certain enterprises or there is predominant use of the subsidy by certain enterprises).¹⁹ Thus, subsidy programmes that target the fisheries sector, either exclusively or as part of a group of industries, could be considered specific and therefore could fall under the FSA.²⁰ It should also be noted that a subsidy that is limited to certain enterprises located in a designated region within the territory of the granting authority is also a specific subsidy.

Article 1 of the FSA limits the scope of the FSA to specific subsidies “to marine wild capture fishing and fishing-related activities at sea” and footnote 1 explicitly excludes aquaculture and

¹⁵ Appellate Body Report, *US – Anti-dumping and countervailing duties (China)* (WT/DS379/AB/R), paras. 317-318. The Appellate Body also noted that “the mere ownership or control over an entity by a government, without more, is not sufficient to establish that the entity is a public body” – see Appellate Body Report, *US – Carbon Steel (India)* (WT/DS436/AB/R), para. 4.10. A full list of WTO dispute settlement reports (including the full case title, citation, and link) is provided at the end of the document.

¹⁶ Appellate Body Report, *US – Large civil aircraft (Second complaint)* (WT/DS353/AB/R), para. 662. See also Appellate Body Report, *Canada – Aircraft* (WT/DS70/AB/R), para. 157.

¹⁷ Panel Report, *Canada – Aircraft*, (WT/DS70/R), para. 9.112; Appellate Body Report, *Canada—Renewable Energy* (WT/DS412/AB/R), para. 5163.

¹⁸ Panel Report, *US – Supercalendered paper*, para. 7.77; Appellate Body Report, *US – Large civil aircraft (Second complaint)* (WT/DS353/AB/R), para. 636.

¹⁹ See Appellate Body Report, *European Communities and certain member States — Measures affecting trade in large civil aircraft* (WT/DS316/AB/R), para. 949; Panel Report, *US – Large Civil Aircraft (2nd complaint)* (WT/DS353/R), paras. 7.190-7.191.

²⁰ For more information on how specificity has been interpreted in WTO jurisprudence, you can consult the “specificity” entry in the WTO Analytic Index at https://www.wto.org/english/res_e/publications_e/ai17_e/subsidies_art2_jur.pdf.



inland fisheries from the scope of the FSA. Article 2 also provides definitions for “fishing” and “fishing-related activities”:

- Fishing: “searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish” (Article 2(b)).
- Fishing-related activities: “any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea” (Article 2(c)).

The focus of the scope of the Agreement on listed fishing and fishing-related activities only when they are undertaken “at sea” indicates that subsidies to activities on land (such as landing, or on-land processing) are not intended to be covered. This suggests that subsidies to infrastructure for landing and processing, for example, would not fall within the scope of the Agreement.

Completing Table 2.1

To complete Table 2.1, list and provide information on all the domestic subsidies currently in place that fall within the scope of the FSA—in other words, all subsidies to marine wild capture fishing and fishing-related activities at sea that are specific within the meaning of Article 2 of the SCM Agreement. An example of such a subsidy is provided in the table (vessel fleet enlargement support programme). Additional rows must be added as necessary.

Bearing in mind that subsidies may be granted by different authorities or institutions, it is important to identify all the relevant authorities or institutions that provide fisheries subsidies and that they collaborate in collating the necessary information. These authorities or institutions could, for instance, include the authority responsible for fisheries, the ministry of trade and/or industry, and the ministry responsible for finance/treasury. They could also include government agencies at both the national and subnational levels. Each of these authorities or institutions should ideally provide details on all the fisheries subsidies they provide, regardless of whether or not such subsidies fall within the scope of the FSA. Once information on all fisheries subsidies has been collected, the subsidies that fall within the scope of the FSA can be identified and included in Table 2.1. All subsidies that fall within the scope of the FSA should be included in the table, even those eligible for flexibilities and exemptions.

The remainder of this subsection provides specific information on how to fill out particular columns of Table 2.1. For each subsidy, provide the following information:

Column “Number”: Sequentially number each subsidy programme listed (there is no specific order that needs to be followed) to allow easy reference to each subsidy in later tables.

Column “Programme name”: Provide the name of the subsidy programme.

Column “Authority responsible for the subsidy”: Indicate which governmental authority is responsible for providing the subsidy.



Column “Form and type of the subsidy”: Indicate both the form and type of the subsidy. The form refers to the funding mechanism through which a subsidy is granted (e.g., grant, loan, tax concession, etc.). The type relates to what costs are being subsidised, for instance the construction, acquisition, or modernisation of vessels, equipment, safety, fuel, payments for income support, insurance schemes, output-related payments, and so on. This does not relate to whom the subsidy is provided, as that must be indicated in the next column.

Column “Description (objective, to whom and how the subsidy is provided)”: Provide a brief description of the subsidy programme, including the objective of the programme, who are the beneficiaries, and how the programme operates.

Column “Amount (subsidy per unit, annual amount for the most recent year(s), and/or total amount) and duration”: Provide information about the amount of the subsidy, which should ideally include the subsidy per unit (for example per boat, per fisher, or per litre of fuel), the annual amount for the most recent fiscal or calendar year(s) (indicating which year(s) the amount(s) refers to), the total amount budgeted for the entire programme, and the duration of the programme.

Column “Is the subsidy implemented to promote the rebuilding of an overfished stock, as per Article 4.3?”: Indicate if the subsidy is implemented in order to rebuild an overfished stock. Examples of such subsidies are those implemented to improve data collection by fishers, or to enable the adoption of more selective fishing gear. This information will allow determining if the subsidy is exempt from the prohibition in Article 4 of granting or maintaining subsidies regarding stocks that are overfished, as per Article 4.3.

Note that the provision setting out the flexibility in Article 4.3 has been drafted in such a way that it does not explicitly require the subsidy to be effective in rebuilding the affected stock towards a biologically sustainable level, although this is the implicit objective of the exception. Nevertheless, from a policy alignment and sustainability perspective, it will be useful to record in later tables any evidence that the subsidy is helping the stock to recover.

Column “Is the subsidy for disaster relief, as per Article 11.1?”: Indicate if the subsidy programme is for disaster relief, as provided for under Article 11.1. This information will allow you to determine if the subsidy is exempt from the disciplines of Article 5 (other subsidies) by virtue of its being granted for disaster relief. However, not all disaster relief subsidies will qualify for the exemption. Respond “yes” only if, as specified in Article 11.1, the subsidy is:

1. Limited to the relief of a particular disaster,
2. Limited to the affected geographic area,
3. Time-limited, and
4. In the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet, to its pre-disaster level.

These criteria are cumulative, meaning that the response should be “yes” only if these four criteria are fulfilled. Article 11.1 also clarifies in a footnote (Footnote 19 of the FSA) that economic or financial crises are not considered disasters in that context, but no further guidance is provided on what constitutes a disaster for purposes of Article 11.1. Based on the



ordinary meaning of the term “disaster,” this would clearly include natural disasters such as cyclones, hurricanes or typhoons, earthquakes, tsunamis, and volcanic eruptions, but could also include some human-made disasters, such as oil spills, other pollution events, or nuclear disasters.

To assess whether the subsidy meets the conditions for exclusion under Article 11.2, it will be necessary to obtain information about the disaster, its nature, its impacts, and the objective and scope of the subsidy. Specifically, you will need to check whether the subsidy is “limited” to relief of a particular disaster or has a broader coverage. If the latter, it will not qualify for the exemption. The subsidy must be limited to the geographic area affected by the disaster. Thus, it will also be important to ascertain where the subsidised vessels are based and/or operate to determine whether the subsidy is only granted to the affected fishery and affected fleet. To fit within the exception, subsidies for disaster relief will need to be time-bound. This means that there should be a clear time period for the provision of subsidy. Finally, any assistance must meet the requirements of Article 11.1(d); that is, any reconstruction subsidies must be limited to restoring the affected fishery and/or the affected fleet up to a level limited to its pre-disaster level. If all conditions are met for a given subsidy, the answer is “yes”.

2.2 Information on Subsidised Fisheries

Summary box

Table 2.2.A allows the collection of information on subsidised fisheries. For each subsidy listed in Table 2.1, the information requirements include a description of the fleet being subsidised, together with a list of subsidised vessels and operators, as well as the corresponding fleet capacity and the stocks fished by the subsidised fleet(s) or fished by the vessels to which the subsidised fleet provides support. The table also asks whether the fleet(s) benefitting from each subsidy meet two specific criteria, which will allow the determination of whether a subsidy can benefit from specific grace periods (under Articles 3.8 and 4.4) and whether it is covered by a specific rule (under Article 5.1).

A separate table, Table 2.2.B, can be filled with the catch data by species for the last year for the identified fisheries.

Scope and Objective of Table 2.2.A

The objective of Table 2.2.A is to collect information on the fisheries that are subsidised. For each subsidy programme listed in Table 2.1, Table 2.2.A allows the collection of information on the fleet(s) that benefits from it, including the type or form of fishing activity (and if relevant fishing-related activity), the fleet capacity, as well as the stocks fished by this fleet or, in the case of fishing-related activities, the stocks fished by the vessels to which this fleet provides support at sea (such as by providing supplies at sea or transporting fish not previously landed). An example is given in the table.



To help assess which rules and flexibilities apply to each subsidy listed in Table 2.1, the table requires indicating whether each subsidy meets two criteria related to the fishing activities being subsidised. The first criterion is whether a subsidy is provided only to fishing and fishing-related activities occurring up to and within the domestic EEZ. This information is relevant because the FSA provides grace periods for such subsidies if they are provided by a developing country Member (see Articles 3.8 and 4.4). The second criterion is whether a subsidy is provided to fishing or fishing-related activities outside of the jurisdiction of a coastal Member (that is, in the high seas) and outside the competence of a relevant RFMO/A. This information is relevant because the FSA prohibits granting or maintaining such subsidies (see Article 5.1).

Information collected in Table 2.2.A will be useful for conducting the compliance and implementation self-assessments related to FSA obligations. The extent to which these obligations will apply in specific situations will depend on the fleet(s) that benefit from subsidies and the stocks they are fishing. The more detailed the information provided, the easier it will be to respond to the relevant questions in Sections 3, 4 and 5. This information will also be useful to the Member in fulfilling the notification requirements established by the FSA.

Completing Table 2.2.A

This table concerns the same subsidies identified in Table 2.1 but focuses more specifically on information related to subsidised fisheries. Each row will be about one particular subsidy. For each subsidy listed in Table 2.1, provide the following information in Table 2.2.A:

Column “Subsidy number”: Copy the number of the subsidy listed in Table 2.1. This is to ensure that the subsidies listed in Table 2.1 can be linked to those in Table 2.2.A.

Column “Fleet(s) (type or kind of fishing or fishing-related activity)”: Indicate the type or kind of fishing activity, and, if relevant, fishing-related activity, the subsidy applies to. This may involve characteristics related to the nature of the relevant fleet(s) (such as artisanal, small scale, semi-industrial, industrial, large scale, etc.), size and tonnage of vessels, the type of gear they use (mechanised, non-mechanised, bottom-trawlers, long-liners, purse seiners, etc.), the type of species they fish, and possibly other descriptors, in particular in the case of fishing-related activities. Note that for fishing-related activities, the information should also include information on the type or form of fishing activity carried out by the vessels that are serviced by the subsidised fleet. This information will be useful to fulfil the FSA’s notification and transparency requirements, according to which notifications of fisheries subsidies must include information on the “type or kind of fishing activity for which the subsidy is provided” (see Article 8.1(a)).

If possible, for each subsidy programme, also list all vessels benefitting from the subsidy, including name, call sign, registration number and RFMO number (where applicable), as well as operators benefitting from the subsidy. These lists of vessels and operators can be included in a separate annex. In Article 8.1(b)(iv), the FSA only requires Members to provide information on subsidised vessels (including their name and identification number) to the extent possible when they notify their subsidies, but the lists of subsidised vessels and



operators will also be helpful in implementing various obligations in the FSA. They will enable quickly verifying if a subsidy is provided to an IUU vessel or operator or to ascertain which vessels or operators benefit from subsidies that need to be brought into alignment with other obligations included in the FSA (such as subsidies for fishing or fishing-related activities regarding overfished stocks under Article 4.1, or fishing and fishing-related activities in unregulated high seas under Article 5.1).

Column “Fleet(s) capacity, if known (Define units, e.g., number of vessels, gross tonnage (GT), engine power (KW) multiplied by days at sea)”: If such information is available, indicate the total capacity of the subsidised fleet(s). One common way of doing this is by using GT as defined by Regulation 3 of the London Convention 1969²¹ or, alternatively, GT as defined by Articles 6 and 7 of the Oslo Convention 1947.²² By multiplying the gross registered tonnage or GT by the number of days each vessel spent at sea during the past year, the total annual capacity can also be obtained. Other measures of fleet capacity can also be used, including the number of vessels. This information is important as it must be included, to the extent possible, in Members’ notifications of fisheries subsidies, as per Article 8.1(b)(iii).

Column “Is the subsidy provided to fishing and fishing-related activities occurring up to and within the Member’s exclusive economic zone (EEZ)? (Yes/No)”: This information is important for developing country Members, as the subsidies provided to fishing and fishing-related activities that occur within their EEZ will benefit from peace clauses under Articles 3.8 and 4.4 of the FSA. If some of the activities that benefit from the subsidy meet that criterion, answer “Yes.” The subsidies to such activities will benefit from the peace clauses.

Column “Is the subsidy provided to fishing or fishing-related activities outside of the jurisdiction of a coastal Member or coastal non-Member and outside the competence of a relevant RFMO/A? (Yes/No)”: This information is important as Article 5.1 provides that no subsidies may be granted in respect of fishing or fishing-related activities outside of the jurisdiction of a coastal Member or coastal non-Member and outside the competence of a relevant RFMO/A. Any such subsidies would therefore be prohibited and would have to be brought into alignment with this obligation, except if such subsidies are for disaster relief (as per Article 11.1).

Column “Stocks”: For each subsidy, indicate the stocks that are fished by subsidised fleets or fished by the vessels to which subsidised fleets provide support (such as by providing supplies at sea, or transporting fish not previously landed). For each stock, if possible, provide the common and scientific names of the species, the Aquatic Sciences and Fisheries Information System (ASFIS) species code (3-alpha code) as provided by the FAO,²³ as well as geographical information when useful or necessary to identify which stock of a particular species is being referred to. The common name refers to the local name of the species. Information in this column is important, as it will allow, together with the information in Table

²¹ International Convention on Tonnage Measurement of Ships, 1969, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%201291/volume-1291-I-21264-English.pdf>

²² Convention for a Uniform System of Tonnage Measurement of Ships, 1947, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20208/volume-208-I-2814-English.pdf>

²³ FAO. (2022). *ASFIS list of species for fishery statistics purposes*. <https://www.fao.org/fishery/en/collection/asfis/en>



2.3 about stock status, the verification of whether a subsidy is being provided for fishing and fishing-related activities regarding an overfished stock.

Scope and Objective of Table 2.2.B

The objective of Table 2.2.B is to record catch data for the stocks fished in subsidised fisheries identified in Table 2.2.A. This information is important because, under Article 8.1(b)(v) of the FSA, Members must, to the extent possible, provide information on catch data in fisheries for which subsidies are provided.

Completing Table 2.2B

This information should ideally be provided by species or group of species for each fishery for which a subsidy is provided, as required under the notification provision under Article 8.1(b)(v). This means that, ideally, for each fishery for which a subsidy is provided (as identified in Table 2.2.A), you should indicate the catch in that fishery by species or group of species, and for the latest year for which data is available (and specifying which year that is). If this proves impracticable due to data limitations, the table should include the catch data that is available, for example national or regional catch data by species or group of species, or any available catch data for multispecies fisheries. Footnote 15 to the FSA specifically provides that in the case of multispecies fisheries, “other relevant and available catch data” may be provided.

For each species, list, if possible, the common and scientific names of the species, the ASFIS species code (3-alpha code) as provided by FAO,²⁴ as well as well as geographical information when useful or necessary to identify which stock of a particular species is referred to. Different units may be used (i.e., catch may be expressed in tonnes, kilograms, or, in some cases, number, but whichever unit is used, it should be specified)

2.3 Information on Stocks Fished in Subsidised Fisheries

Summary box

Table 2.3 allows the collection of information on the status of the stocks fished by subsidised fleets or fished by the vessels to which the subsidised fleets provides support, as identified in Table 2.2.A. This information will indicate to which stocks the subsidy prohibition in Article 4.1, relating to overfished stocks, applies. For overfished stocks, the table also asks whether management measures are implemented to rebuild such stocks to a biologically sustainable level, which can allow Members to benefit from an exemption from the subsidy prohibition, as per Article 4.3. More generally, the table also allows the collection of information on the conservation and management measures in place for each stock, if possible.

²⁴ FAO. (2022). *ASFIS list of species for fishery statistics purposes*. <https://www.fao.org/fishery/en/collection/asfis/en>



Scope and Objective of Table 2.3

The purpose of Table 2.3 is to bring together in one place information on the status of all stocks fished by fleets that receive subsidies from domestic authorities, regardless of where such fishing happens, as well as information on relevant fisheries management measures implemented for such stocks. This information should ideally also include stocks that are fished by the vessels that are serviced (such as by providing supplies at sea, or transporting fish not previously landed) by fleets of support vessels that receive subsidies from your authorities. For each stock, the table provides space for information on the stock's status (as per the latest stock assessment conclusions recognised by domestic authorities, if any). In the case of overfished stocks, the table also asks whether fisheries management measures are implemented to rebuild the stock to a biologically sustainable level. This information will help determine whether the subsidy prohibition in Article 4.1 applies and whether the subsidies are permitted under the exemption contained in Article 4.3. The table also requires providing any available information on the conservation and management measures in place for each stock, which will be useful to the Member in fulfilling some of the notification requirements established by the FSA (as per Article 8.1(b)(ii)). Examples are given in the table.

Completing Table 2.3

Add additional rows as necessary for all stocks listed in the last column of Table 2.2.A as being fished by subsidised fleets or by fleets to which subsidised fleets provide support at sea, even if no stock assessment has been undertaken and the status of the stock is unknown. Each row represents a specific stock. For each stock, provide the following information in Table 2.3:

Column “Stock”: For each stock, indicate, if possible, the common and scientific names of the species, the ASFIS species code (3-alpha code) as provided by the FAO,²⁵ as well as geographical information when useful or necessary to identify which stock of a particular species is referred to.

Column “Stock status (Overfished, maximally sustainably fished, underfished, unknown)”: Indicate for each stock whether it is overfished, maximally sustainably fished, underfished, or whether its fishing status is unknown. This information may be based on stock status decisions made by domestic authorities (for stocks in the domestic EEZ), those of another coastal Member (for stocks in its EEZ), or by an RFMO/A (for stocks under its competence). Note that the status information need not be the result of a formal stock assessment: it can be the result of whatever methods are used to discern the status of a stock. It may also cover stocks that are assessed as overfished, but with different levels of certainty, as stock assessments often include a level of probability. This information will allow you to determine which stocks the subsidy prohibition related to overfished stocks in Article 4.1 might apply to. It is also important because, according to Article 8.1(b)(i), Members must, to the extent possible, notify the status of the stocks in the fisheries for which subsidies are provided.

²⁵ FAO. (2022). *ASFIS list of species for fishery statistics purposes*. <https://www.fao.org/fishery/en/collection/asfis/en>



Column “Source”: Indicate the source of the stock status information, including which RFMO/A made the assessment, or if domestic or another coastal Member’s authorities made the assessment, including the date of the latest assessment. If possible, also include a reference or a link to the document containing the stock status decision. If no data are available, indicate “Not stock status information available.”

Column “For overfished stocks only: Are measures implemented to rebuild the stock to a biologically sustainable level? (Yes, No, Not applicable)”: For overfished stocks, indicate “Yes” or “No.” This information will allow you to determine the overfished stocks regarding which subsidies are still permitted as per the exemption in Articles 4.3. Footnote 11 of the FSA indicates that a biologically sustainable level is “the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing-related activity is taking place, using reference points such as MSY or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.”

Note that the provision setting out the flexibility in Article 4.3 has been drafted in such a way that it does not explicitly require the measures to be effective in rebuilding the stock toward a biologically sustainable level, although this is the implicit objective of the exception. Nevertheless, from both a compliance and a sustainability perspective, it will be useful to record in this table any evidence that such measures are achieving their objectives.

This column is not relevant for stocks that are not overfished. For such stocks, just indicate “Not applicable.”

Column “Information on conservation and management measures in place, if available”: Provide a brief description of the conservation and management measures in place in respect to the stock. For example, include input measures such as closed seasons or closed areas, or output measures such as total allowable catches and quotas. If possible, also indicate any evidence regarding the effectiveness of the management measures. If there are no management measures in place, indicate “No measures in place.” This information is important because according to Article 8.1.(b)(ii), Members must, to the extent possible, provide information in their subsidy notifications on the conservation and management measures in place for fish stock(s) in subsidised fisheries.



2.4 List of Vessels and Operators Subject to an IUU Fishing Determination

Summary box

Table 2.4 requires listing all domestic vessels and operators²⁶ that have been the subject of an IUU determination, and all foreign vessels and operators that have been the subject of an IUU determination by domestic authorities, for which the sanction(s) or listing is still in place or for which a subsidy prohibition should still apply as per Article 3.4. The information that needs to be provided includes the name of the operator or vessel(s) concerned, the entity that made the determination, the type of IUU fishing that the vessel or operator engaged in, a summary of the relevant information on which the determination was based, the resulting sanction(s), and information on the vessel's or operator's listing for IUU fishing (in case of listing by an RFMO).

Scope and Objective of Table 2.4

The purpose of Table 2.4 is to compile a list of domestic vessels and operators that were determined as having engaged in IUU fishing by the Member's domestic authorities, another coastal Member's authorities, another flag State Member's authorities, or an RFMO/A,²⁷ for which the sanction(s) that has resulted from the determination or the relevant IUU listing by an RFMO/A is still in place. When no sanction or listing is still in place, but your authorities' assessment taking into account the nature, gravity, and repetition of the IUU activity (as per Article 3.4 of the FSA) is that the subsidy prohibition in Article 3.1 must still apply, the relevant IUU determination should also be included in the table. Information on domestic vessels and operators that were determined to have engaged in IUU activities can reach domestic authorities through different channels, depending on the entity making the determination. Including all such determinations in this table will generate a comprehensive record that will allow identifying all the domestic vessels and operators to which the subsidy prohibition in Article 3.1 applies.

Determinations of IUU activities made by domestic authorities regarding foreign vessels should also be included in the list, as the FSA requires Members to notify to the Committee all IUU determinations made by their domestic authorities (as per Article 3.3(b) and 8.2).

Each vessel or operator should be listed on a separate row. For each row, the table requires indicating the name of the operator or vessel that has been the subject of the determination,

²⁶ "Domestic vessels and operators" should be understood as any vessel or operator that is eligible to receive subsidies from the authorities of the Member completing the table. In most cases, this will likely be limited to vessels and operators of vessels that fly the Member's flag. If vessels or operators that do not fly the Member's flag are eligible to receive subsidies from that Member's government, IUU determinations concerning those vessels or operators should also be listed in Table 2.4.

²⁷ For IUU determinations made by RFMO/As, you may want to consult the Trygg Mat Tracking Combined IUU Vessel List: See Trygg Mat Tracking. (n.d.). *Combined IUU vessel list*. <https://www.tm-tracking.org/combined-iuu-vessel-list>.



the entity that made the determination, the type of IUU activity the vessel or operator engaged in, a brief summary of the relevant factual information on which the determination was based, the sanction(s) that resulted from the determination, as well as information on the RFMO listing if there is one. The table should include all relevant IUU determinations domestic authorities are aware of, regardless of whether there is evidence of subsidies being provided to the operator or vessels identified as being involved in IUU fishing.

Completing Table 2.4

Column “Number”: Sequentially number each IUU determination. Remember to include all relevant IUU determinations made concerning domestic vessels, which may be made by your authorities, another Member’s authorities in its capacity as either coastal or flag State, or by an RFMO/A, as well as all relevant IUU determinations made by your domestic authorities regarding foreign vessels/operators.

Column “Vessel or operator subject to the IUU determination”: Indicate the name of the vessel or the operator that was the subject of the IUU determination, as well as any relevant identifier. This may include call sign, registration, or International Maritime Organization and RFMO numbers. This information will identify the vessels and operators that should be prevented from receiving subsidies as per Article 3.1. Information about IUU determinations made by domestic authorities will also need to be notified under Article 8.2.

Column “Entity responsible for the IUU determination (incl. in which capacity the determination was made)”: Indicate the entity that made the IUU determination, including in which capacity (as coastal State, flag State, or RFMO/A). This information will allow determining the conditions under which the determination can trigger the subsidy prohibition, as per Articles 3.2 and 3.3.

Column “Type of IUU activity”: Indicate the type of IUU activity that resulted in the determination (e.g., fishing in a closed area). This information must be considered in setting the duration of the subsidy prohibition as per Article 3.4.

Column “Relevant factual information”: Provide a brief description of the factual information available (such as surveillance reports, crew interviews, etc.) on which the determination is based. Any information indicating that the same vessel or operator has already engaged in IUU activities in the past can also be included in that column, as this information must also be considered in setting the duration of the subsidy prohibition as per Article 3.4. This can also be done in a separate annex if more convenient.

Column “Sanctions (incl. duration, if applicable)”: Provide brief information about the sanction resulting from the IUU determination for the vessel or operator, including its duration, if applicable. This information must also be considered in setting the duration of the subsidy prohibition as per Article 3.4.

Column “RFMO/A listing (incl. date of listing)”: Indicate whether the vessel or operator has been listed on an RFMO/A IUU list, when it has been listed, and the current status of this listing. This information must also be considered in setting the duration of the subsidy prohibition as per Article 3.4.



2.5 Data Collection

Summary box

Table 2.5 summarises the availability of the information needed to complete Tables 2.1 to 2.4 and allows the determination of whether the required mechanisms are in place to collect such information on an ongoing basis. It thus provides a summary of the extent to which the key information required to complete the self-assessment Checklist, and, more generally, to implement the FSA, is available and collected regularly. It also allows the identification of the type of technical assistance and capacity building that may be needed to fill information availability or collection gaps.

Scope and Objective of Table 2.5

The objective of Table 2.5 is to provide a summary regarding the availability and collection of key information that is needed to complete the Checklist and, more broadly, to implement the FSA. Table 2.5 is structured around four different questions, which relate to the four preceding inventory tables (Tables 2.1–2.4) that guide the collection of such information. Table 2.5 allows indicating whether the information required for completing each of these tables is currently available and collected regularly. If that is not the case, it also allows indicating what actions would be needed to fill this gap and identify the type of technical assistance and capacity building that would be needed for implementing such actions.

Completing Table 2.5

For all questions in Table 2.5, provide the following information:

Column “Yes/no/unknown”: Respond to the question by indicating whether the required information to fill each inventory table is available and whether mechanisms are in place to regularly collect such information. To do so, simply respond “Yes,” “No,” or “Don’t know.” In cases where the information is currently available, but there are no mechanisms to collect it regularly, you may find it useful to make that distinction in your response by indicating “Yes for current availability; No for collection mechanism.”

Note that in some cases, such information collection mechanisms require cooperation between different agencies or ministries, including at and between the national and subnational levels. Relevant agencies may include, for example, the ministries or agencies responsible for finance, trade and/or industry, or agriculture and/or fisheries. Information collection mechanisms may also require collecting information from actors beyond your domestic authorities, including relevant RFMO/As, coastal Members, or flag State Members.

Column “Short description (Identify existing and missing information, procedures or mechanisms)”: For each inventory table, provide a brief description of available information and identify the type of information requested that is not available. Similarly, identify existing procedures or mechanisms used to collect relevant information, or indicate



the absence of relevant procedures or mechanisms where they do not exist. If all necessary information is available and the procedures or mechanisms to collect it regularly are in place, no further action is required, and the following columns can be ignored.

Column “Actions required to collect relevant information”: Should the necessary information not be available to fill a particular inventory table, or the necessary mechanisms not be in place to regularly collect such information, indicate the actions needed to fill this gap.

Column “Technical assistance and capacity building needs”: For the actions identified in the previous column, and in case the internal resources or capacity to implement these actions are not sufficient, indicate the type and scope of the technical assistance and capacity building that would be needed in as much detail as possible.

Note that for each of the FSA’s obligations considered in Sections 3 to 7 of the Checklist and Guide (below), the “Ongoing alignment” table also includes columns on “Actions required to enable ongoing alignment” and “Technical assistance and capacity building needs.” The information in these columns in Table 2.5 can be used to inform the same columns in those tables and vice versa.

3.0

Illegal, Unreported, and Unregulated Fishing





3.1 Introduction

Article 3 relates to the subsidies that contribute to IUU fishing and contains the following obligations:

1. **IUU fishing subsidy prohibition**

An obligation on Members not to grant or maintain subsidies to vessels or operators engaged in IUU fishing or activities supporting IUU fishing (see Article 3.1), and a related obligation on subsidizing Members to take into account the nature, gravity, and repetition of IUU fishing in setting the duration of application of this subsidy prohibition (see Article 3.4).

Subsidies provided by developing country Members to fishing and fishing-related activities occurring within their EEZ benefit from a 2-year peace clause, during which time those subsidies are exempt from any action under the WTO dispute settlement mechanism that would be based on this prohibition.

2. **Due regard and appropriate action obligation**

An obligation on subsidizing Members to give due regard to the information and take appropriate action when a port State Member notifies that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing (see Article 3.6).

3. **Obligation to have laws, regulations, and/or procedures in place**

An obligation on Members to have legislation, regulations, and/or procedures in place to ensure that vessels or operators engaged in IUU fishing, or activities supporting IUU fishing, are not subsidised (see Article 3.7).

4. **Obligation to notify IUU determinations**

An obligation on coastal Members to notify the Committee in charge of administering the FSA of any affirmative determination of IUU activities made by their authorities (see final sentence in Article 3.3(b)).

5. **Obligation to notify implementation measures**

An obligation on subsidizing Members to notify to the Committee measures taken to implement the IUU subsidy prohibition (see Article 3.5).

While the three first obligations listed above are addressed in this section of the Guide (in Sections 3.1, 3.2, and 3.3, respectively), the last two are notification obligations and are thus addressed in Section 8 with other notification obligations.

As indicated in footnote 4 of the FSA, IUU activities are those set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, adopted by the FAO²⁸ in 2001 (reproduced in Box 3.1). In essence, this relates to activities that are inconsistent with, in violation of, or in contravention of national laws and regulations or international obligations on fishing activities, reporting procedures, conservation and management measures, and responsibilities for the conservation of living marine resources.

²⁸ FAO (2001).



Paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing

- 3.1 Illegal fishing refers to activities:
 - 3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
 - 3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
 - 3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.
- 3.2 Unreported fishing refers to fishing activities:
 - 3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
 - 3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.
- 3.3 Unregulated fishing refers to fishing activities:
 - 3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
 - 3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.
- 3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).



3.2 IUU Fishing Subsidy Prohibition (Articles 3.1–3.4 and 3.8)

Summary box

Obligation: No Member shall grant or maintain subsidies to vessels or operators found to have engaged in IUU fishing, or to fishing-related activities in support of IUU fishing, based on an affirmative determination of IUU fishing made by:

1. A coastal Member for activities in its waters, provided the determination is based on relevant factual information and the flag State Member (and, if known, the subsidizing Member) has been duly notified and provided an opportunity to exchange information; or
2. A flag state Member for activities by vessels flying its flag; or
3. An RFMO/A for fisheries under its competence, provided the determination was made in accordance with its rules and procedures and relevant international law, including through the provision of timely notification and relevant information

The subsidizing Member must set the duration of the prohibition taking into account the nature, gravity and repetition of the IUU fishing activity. At a minimum, it shall apply as long as the IUU sanction remains in force, or as long as the vessel or operator is listed by an RFMO/A, whichever is longer.

S&D provision (peace clause): Subsidies provided by LDC and developing country Members within their EEZ cannot be challenged through the WTO's dispute settlement mechanism because of a breach of this obligation during the first 2 years after entry into force of the FSA.

Note: The text does not oblige Members to make a IUU determination, but only not to provide subsidies to IUU vessels or operators as determined by the competent authorities listed above, or to any support activity.



Relevant Legal Text

ARTICLE 3: SUBSIDIES CONTRIBUTING TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴

- 3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁵ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.
- 3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following^{6, 7}:
- (a) a coastal Member, for activities in areas under its jurisdiction; or
 - (b) a flag State Member, for activities by vessels flying its flag; or
 - (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.
- 3.3
- (a) An affirmative determination⁸ under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing.
 - (b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:
 - (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;

⁴ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁵ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

⁶ Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

⁷ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

⁸ Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination



- (ii) an opportunity to exchange relevant information⁹ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
- (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.
- (iv) The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as “the Committee”).

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction¹⁰ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

[...]

3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least developed country (LDC) Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

⁹ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

¹⁰ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

Current Alignment: Completing Table 3.1.A (IUU fishing subsidy prohibition)

General Considerations

The first obligation under Article 3 is a prohibition to grant or maintain subsidies to vessels or operators that are subject to an affirmative determination of IUU fishing or to any of their support activities (Articles 3.1–3.3). The prohibition does not target a particular subsidy scheme but rather the actors found to have engaged in IUU fishing or fishing-related activities in support of such fishing. It is triggered by an affirmative determination of IUU fishing and requires the government to ensure that neither the incriminated vessel nor operator, nor any supporting activity, receives any of the subsidies falling under the scope of the FSA (i.e., subsidies provided to marine wild capture fishing and fishing-related activities at sea).

The subsidy prohibition may be triggered by an affirmative IUU determination made by a WTO Member acting as a coastal Member for activities in areas under its jurisdiction, or by a WTO Member acting as a flag State Member for activities by vessels flying its flag. It can also be triggered by an RFMO/A determination in areas and for species under its competence. Importantly, the scope of the subsidy prohibition is determined by the scope of the



determination. If a determination is about a vessel, the prohibition applies to subsidies to that vessel; if the determination is instead, or also, about an operator, subsidies to that operator are prohibited. On top of vessels and operators that have themselves been identified as engaged in IUU fishing, the prohibition also applies to “fishing-related activities in support of such fishing.” This would cover subsidies to support vessels that service (such as by providing supplies at sea or transporting fish not previously landed) a vessel that has itself been subject of an IUU determination.

Article 2 defines “operator” as “the owner of a vessel, or any person, who is in charge of or directs or controls the vessel” and “vessel” as “any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing-related activities.” Footnote 5 also specifies that for the purpose of Article 3, the term “operator” means the operator “at the time of the IUU fishing infraction.”

An affirmative determination refers to “the final finding by a Member” (a coastal Member or a flag State Member) “and/or the final listing by an RFMO/A” that a vessel or operator has engaged in IUU fishing (Article 3.3(a)). Such determinations are usually made following an investigation into the behaviour of vessels or operators by the authorities that are competent to monitor fishing and fishing-related activities in a given fishery. Detection of IUU activities can be made through direct observation, in particular through surveillance activities conducted by Members, such as the use of patrol vessels or aerial surveillance. Such activities can also be reported by other fishing vessels or be detected through indirect observation, using remote sensing, vessel monitoring system, or automatic identification system data. The investigation can include evidence gathering through boarding vessels, determination of catch position, date and composition of catch, and crew interviews.

As specified in footnote 6 to the FSA, nothing in Article 3 requires a Member to initiate IUU fishing investigations or make IUU fishing determinations. Nor can a Member be challenged under the WTO dispute settlement system for not making an IUU determination. If and when an affirmative IUU determination is made by one of the entities identified in Article 3.2 regarding one of the vessels or operators a Member subsidises, however, the subsidizing Member must apply the prohibition. Footnote 7 to the FSA clarifies that nothing in Article 3 affects the competence under relevant international law of listed entities with regard to IUU determinations.

When an IUU determination consistent with Article 3 is made, the obligation not to provide subsidies to IUU vessels or operators is automatic. However, it is up to the subsidizing Member to determine the duration of the prohibition. In making this determination, the subsidizing Member must take into account the nature, gravity, and repetition of IUU activities. Article 3.4 states, however, that in any case, the prohibition shall apply at least as long as the sanction provided for under the laws or procedures of the authority having made the determination remains in force, or as long as the vessel or operator is listed as engaged in IUU fishing by an RFMO/A, whichever is longer. In other words, Article 3.4 introduces



a minimum duration of subsidy prohibition but does not constrain the subsidizing Member from imposing a longer prohibition.²⁹

In practice, different situations will occur depending on who makes the determination (your own authorities, those of another coastal Member, or an RFMO/A), in particular because the channels through which information on IUU determinations will reach your domestic authorities will not be the same. Also, the disciplines envisage different requirements for an IUU determination to trigger the subsidy prohibition depending upon the entity making the determination. Questions 1–3 in the Checklist’s Table 3.1.A address these different possible situations and help define the Member’s obligations under Article 3.1 of the FSA in each of these cases. Questions 4a to 4c help determine whether the peace clause under Article 3.8, whereby certain subsidies granted or maintained by developing country Members cannot be subject to challenge under the WTO dispute settlement mechanism during a certain period of time, applies to any subsidies provided by your government.

Note that while the remainder of this section does not provide specific guidance on how to fill the “Relevant information” column of Table 3.1.A, this column should be used to indicate any useful information that supports your answer in the “Yes/No” column and that you would like to keep a record of.

Question 1a: Does the Member grant or maintain subsidies to vessels or operators that have been identified as having engaged in IUU fishing by the Member’s authorities for activities in waters under the Member’s jurisdiction, or for activities of vessels flying the Member’s flag outside waters under the Member’s jurisdiction?

This question envisages situations where an affirmative IUU determination is made by your domestic authorities regarding a vessel or operator that it subsidises for activities occurring within your domestic EEZ (as per Article 3.2(a)) or undertaken by a vessel flying your flag but fishing outside of your EEZ (as per Article 3.2(b)). In other words, this question refers to the situation where the Member finds that its own vessels have engaged in IUU fishing.³⁰ This may thus cover IUU infractions of various degrees of gravity and for which the sanctions already provided for domestically may be of a criminal or administrative nature. The Member has discretion to decide which of the infractions currently included in domestic laws or regulations are “determinations” for the purposes of this agreement. It may, for example,

²⁹ Note that in the case of sanctions that may be immediate and not last in time, like a fine, and if there is no RFMO/A listing, the minimum duration of the subsidy prohibition would only be until the sanction has been executed (for example, the fine has been paid).

³⁰ The FSA provides (in Article 3.3(b)) that coastal Member States’ IUU determinations must rely on relevant factual information and follow certain steps (notification, opportunity to exchange information prior to a determination) in order to trigger the subsidy prohibition. However, the FSA does not set forth any such requirements for determinations made by flag State Members; for such determinations, the prohibition is triggered automatically once there is a determination. In practice, the IUU determinations that Members make in their coastal Member capacity regarding vessels or operators that they themselves subsidise are also made in a flag State capacity. This means, as a practical matter, that because no particular evidence or procedure is required for the subsidy prohibition to be triggered when there is a determination by a flag State, the prohibition against providing subsidies will be automatically triggered once the Member has made an IUU determination regarding its own vessels.



decide that only infractions of a certain degree of gravity, or which attract a certain kind of sanction, are "determinations." In other words, not every decision regarding an infraction of fishing rules needs to be considered a "determination."

To answer the question, you will need to check whether any vessel or operator subject to an IUU determination made by your authorities is also a vessel or operator which your authorities currently subsidise. This can be done by comparing the information collected in Table 2.4 (List of vessels and operators subject to an IUU fishing determination) and the information collected in Table 2.2.A (Information on subsidised fisheries). If it proved impossible to provide complete lists of subsidised vessels and operators under each subsidy scheme when filling out Table 2.2.A, it will be necessary to determine whether any identified IUU vessel or operator receives subsidies from your authorities. If any of the incriminated vessels or operators benefits from subsidies identified in Table 2.1, such subsidies must be removed from that vessel or operator for a period consistent with Article 3.4. This duration must be set taking into account the nature, gravity, and repetition of the IUU fishing activity, and be at least as long as the sanction imposed on the fishing vessel by the domestic authorities lasts, or as long as any RFMO/A listing stands, whichever is longer (as per Article 3.4). If none of the incriminated vessels or operators benefits from subsidies, there is no further action that needs to be taken in the context of this question.

Question 1b: Does the Member grant or maintain subsidies to fishing-related activities at sea in support of vessels or operators that have been identified as having engaged in IUU fishing by the Member's authorities for activities in waters under the Member's jurisdiction, or for activities of vessels flying the Member's flag outside waters under the Member's jurisdiction?

This question addresses situations where an affirmative IUU determination is made by your domestic authorities regarding activities occurring within your domestic EEZ or undertaken by a vessel flying your flag, and where subsidies are provided to vessels that provide at-sea support to the identified IUU vessel. Like Question 1a, this question is about cases where your own authorities make an IUU determination, but it focuses on subsidies to vessels that provide at-sea support to the vessel that is the subject of the determination. As a consequence, if your authorities do not provide any subsidy to such support vessels, answer "No" and move to the next question. If your authorities provide subsidies to support vessels, then you will need to check whether any such subsidy must be brought into alignment with the requirements of Article 3.1.

To answer question 1b, you will need to check whether any support vessel that receives subsidies from your authorities services (such as by transporting fish not previously landed at a port or providing supplies at sea) any vessel subject to an IUU determination made by your authorities. This may be done by using the information provided in Table 2.2.A (Information on subsidised fisheries) and the information provided in Table 2.4 (List of vessels and operators subject to an IUU fishing determination) as a basis for checking whether any of the subsidised vessels service an identified IUU vessel. Various ways of doing this are conceivable. A Member may choose to rely on existing evidence, for example from its authorities' monitoring activities, regarding cases where support vessels may have provided at-sea support to IUU vessels. It may also design a more proactive approach, systemically identifying support



vessels to every IUU vessel identified by domestic authorities through any available means, including, for example, satellite tracking technologies.

If any of the subsidised support vessels services any vessel that has been subject of an IUU determination by your own authorities, the subsidies provided to that support vessel must be removed for a period consistent with Article 3.4. This duration must be set taking into account the nature, gravity, and repetition of the IUU fishing activity, and be at least as long as the sanction imposed on the fishing vessel by the domestic authorities lasts, or as long as any RFMO/A listing stands, whichever is longer (as per Article 3.4). If no subsidised support vessel services an IUU vessel, there is no further action that needs to be taken in the context of this question.

Question 2a: Does the Member grant or maintain subsidies to vessels or operators that have been identified as having engaged in IUU fishing by another coastal Member for activities in waters under that coastal Member’s jurisdiction?

This question envisages a situation in which one of the vessels or operators subsidised by your authorities is subject to an affirmative determination of IUU fishing made by another WTO Member for activities in waters under that Member’s jurisdiction.³¹ In this case, the other WTO Member acts as coastal Member and makes an IUU determination regarding activities in its EEZ as per Article 3.2(a).

To answer the question, you will need to check if any IUU vessel or operator identified by another coastal Member’s authorities is subsidised by your authorities. This can be done by comparing the information provided in Table 2.2.A (Information on subsidised fisheries) with the information provided in Table 2.4 (List of vessels and operators subject to an IUU fishing determination), or through any other way to obtain such information.

If the answer is “Yes,” you will need to check whether the conditions addressed under question 2c have been fulfilled by the coastal Member making the determination, and if they have, the relevant subsidies will need to be brought in line with the requirements of Article 3.1. If the answer is “No,” there is no further action that needs to be taken in the context of this question.

Question 2b: Does the Member grant or maintain subsidies to fishing-related activities at sea in support of vessels that have been identified as having engaged in IUU fishing by another coastal Member for activities in waters under that coastal Member’s jurisdiction?

This question addresses situations where a vessel that is subsidised by your authorities provides at-sea support to a vessel that has been the subject of an affirmative determination of IUU fishing made by another coastal Member. If your government does not provide any

³¹ This question does not explicitly address situations where an IUU determination has been made by another flag state regarding a vessel that receives subsidies from your authorities. This is because under the FSA, no particular requirements (in terms of the procedures followed, or the evidence used) apply to flag state determinations for such determinations to trigger the subsidy prohibition in Article 3.1, which suggests that Members expected determinations made in a flag state capacity to essentially apply to vessels that fly the subsidizing Member’s flag. If, however, your authorities do provide subsidies to vessels that do not fly your flag, you may also want to check whether any IUU determination has been made regarding these vessels by the relevant flag state Member(s). The same comment also applies to Question 2b.



subsidy to support vessels that may be concerned, you can thus simply answer “No” and move to the next question. If your government provides subsidies to support vessels that may be concerned, then you will need to check whether any such subsidy must be brought into alignment with the requirements of Article 3.1.

To answer the question, you will need to check whether any vessel that receives subsidies from your authorities services any vessel subject to an IUU determination made by another coastal Member. This may be done by using the information provided in Table 2.2.A (Information on subsidised fisheries) and the information provided in Table 2.4 (List of vessels and operators subject to an IUU fishing determination) as a basis for checking whether any of the subsidised vessels services an identified IUU vessel. While some Members may choose—or need, depending on resources available—to do this by relying on possible evidence provided by the coastal Member that made the IUU determination indicating that a support vessel has provided at-sea support to an IUU vessel, others may proactively attempt to determine whether any of the vessels serviced by vessels they subsidise have been the subject of an IUU determination, including, for example, by using satellite tracking technologies.

If any of the subsidised support vessels services any vessel that has been subject of an IUU determination by another coastal Member, you will need to check whether the conditions addressed under question 2c have been fulfilled by the coastal Member, and if they have, the relevant subsidies will need to be brought in line with the requirements of Article 3.1. If none of the subsidised vessels services a vessel that has been the subject of a relevant IUU determination, there is no further action that needs to be taken in the context of this question.

Question 2c: Is the relevant IUU determination based on relevant factual information, and has the coastal Member provided the flag State Member and, if known, the subsidising Member with:

- (i) Timely notification of a vessel or operator’s detention pending investigation or of the initiation of an investigation into IUU fishing including reference to relevant factual information and applicable laws, regulations, procedures, or measures.
- (ii) An opportunity to exchange relevant information prior to a determination, so as to allow such information to be considered in the final determination.
- (iii) Notification of the final determination and of any sanctions applied (including duration)?

This question only needs to be answered if the answer to Question 2a and/or Question 2b was “Yes.” It addresses the requirements that a determination made by another Member in its coastal Member capacity needs to fulfil to trigger an obligation for your authorities not to provide subsidies, as per Article 3.3(b).

These essentially consist of two main elements. The first requires the determination to have been based on relevant factual information (as per the chapeau of Article 3.3(b)). The second element relates to procedural aspects and has three distinct components (see Article 3.3(b) (i)—(iii)). It requires the coastal Member who has made the determination to provide to the flag State Member and, if known, the subsidising Member: (i) timely notification of a vessel or operator’s detention or the initiation of an investigation into IUU fishing, including reference



to relevant factual information and applicable laws, regulations, procedures, or measures; (ii) an opportunity to exchange relevant information prior to a determination, so as to allow such information to be considered in the final determination; and (iii) notification of the final determination and any resulting sanction, including its duration. Note that these three criteria apply cumulatively; that is, if the coastal Member failed to apply any of these criteria, your authorities are not required to remove any relevant subsidy. Regarding “(ii),” there is no obligation on the flag State Member or subsidising Member to exchange such information, although without such information, the coastal Member will be free to take a decision based on information it has gathered on its own. Article 3.3(b)(ii) also indicates that the manner and time period in which such information exchange should be carried out may be specified by the coastal Member.³²

To answer the question, you will need to verify whether the coastal Member made its IUU determination based on “relevant factual information.” Possible categories of “relevant factual information” include incorrect or falsified logbooks discovered through catch verification processes such as at-sea or in-port inspection, Vessel Monitoring System data showing vessel presence in closed areas, unauthorised transshipments, landing or transshipment of prohibited species, or direct observation of fishing in a prohibited area or with prohibited gear. You will also need to verify whether the procedural aspects set forth in Article 3.3(b)(i)–(iii) have been complied with—that is, notification at the beginning and end of the determination process, and opportunity to exchange information as part of the process. If the determination was based on relevant factual information and followed the required procedural steps, the relevant subsidies must be removed from the relevant fishing vessel(s), support vessel(s), or operator(s) for a period consistent with Article 3.4. This duration must be set taking into account the nature, gravity, and repetition of the IUU fishing activity, and be at least as long as the sanction imposed on the fishing vessel by the coastal Member’s authorities lasts, or as long as any RFMO/A listing stands, whichever is longer (as per Article 3.4). If, however, any of these requirements have not been fulfilled, there is no further action that needs to be taken in the context of this question.

Question 3a: Does the Member grant or maintain subsidies to vessels or operators that have been identified as having engaged in IUU fishing by a relevant RFMO/A?

This question envisages a situation in which one of the vessels or operators subsidised by your authorities has been the subject of an affirmative determination of IUU fishing made by an RFMO/A in areas and for species under the RFMO/A’s competence, as per Article 3.2(c). Should a vessel or operator be the subject of such a determination, it will be added to that RFMO/A’s IUU list in accordance with its rules and procedures. Each RFMO/A will have a procedure for listing vessels and operators as IUU and regarding the actions required before

³² Such period must be reasonable, but what is reasonable will depend on the facts and circumstances of each case.



a vessel or operator can be removed from this list. These lists are made accessible to facilitate information sharing.³³

To answer the question, you will need to check if any of the RFMO/A IUU lists include a vessel or operator that your authorities currently subsidise. This may be done by comparing the information provided in Table 2.2.A (Information on subsidised fisheries) with the information provided in Table 2.4 (List of vessels and operators subject to an IUU fishing determination), or through any other means of obtaining such information. If one of the vessels or operators subsidised by your authorities is on an RFMO/A IUU list, you will need to make sure that the conditions set forth in Article 3.2(c) (and addressed in Question 3c) have been fulfilled, and if they have, the relevant subsidies will need to be brought in line with the requirements of Article 3.1. If none of the vessels or operators receiving subsidies from your authorities is on an RFMO/A IUU list, there is no further action that needs to be taken in the context of this question.

Question 3b: Does the Member grant or maintain subsidies to fishing-related activities at sea in support of vessels that have been identified as having engaged in IUU fishing by a relevant RFMO/A?

This question addresses situations where a vessel subsidised by your authorities provides at-sea support to a vessel that has been the subject of an IUU determination made by an RFMO/A in areas and for species under its competence. As a consequence, if your government does not provide any subsidy to support vessels that may be concerned, you can simply answer “No” and move to the next question. If your government provides subsidies to support vessels that may be concerned, then you will need to check whether any such subsidy must be brought into alignment with the requirements of Article 3.1.

To answer the question, you will need to check whether any vessel that receives subsidies from your authorities services any vessel included on one of the RFMO/A IUU lists. This may be done by comparing the information provided in Table 2.2.A (Information on subsidised fisheries) with the information provided in Table 2.4 (List of vessels and operators subject to an IUU fishing determination). While some Members may choose—or need, depending on resources available—to do this by relying on possible evidence provided by the RFMO/A that a support vessel has provided at-sea support to an IUU vessel, others may proactively attempt to determine whether any of the vessels serviced by the support vessels they subsidise are included on an RFMO/A IUU list, including, for example, by using satellite tracking technologies.

³³ Such lists are maintained by RFMO/As including the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the General Fisheries Commission for the Mediterranean (GFCM), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Inter-American Tropical Tuna Commission (IATTC), the Indian Ocean Tuna Commission (IOTC), the Northwest Atlantic Fisheries Organization (NAFO), the North-East Atlantic Fisheries Commission (NEAFC), the North Pacific Fisheries Commission (NPFC), the South East Atlantic Fisheries Organisation (SEAFO), the Southern Indian Ocean Fisheries Agreement (SIOFA) and the Western and Central Pacific Fisheries Commission (WCPFC). A summary of the combined lists is available at the Trygg Matt Tracking website: IUU Vessel List (iuu-vessels.org).



If any of the subsidised support vessels services any vessel that is included on an RFMO/A IUU list, you will need to make sure that the conditions set forth in Article 3.2(c) (and addressed in Question 3c) are fulfilled, and if they are, the relevant subsidies will need to be brought in line with the requirements of Article 3.1. If none of the subsidised vessels services a vessel that is included on an RFMO/A IUU list, there is no further action that needs to be taken in the context of this question.

Question 3c: Has the relevant IUU determination by an RFMO/A been made in accordance with its rules and procedures and relevant international law, including through the provision of timely notification and relevant information?

This question is about the requirements that an IUU determination made by an RFMO/A needs to fulfil to trigger an obligation for your authorities not to provide subsidies, as per Article 3.2(c).

The IUU determination must have been made in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information.³⁴ RFMO/As establish rules called conservation measures or conservation and management measures that members of the management organisation or arrangement agree to abide by and which define what activities are considered IUU in the fisheries they manage. Such measures may include requirements to, for example, record and report catch and catch-related data. Failure to comply with these measures can lead to an IUU determination by the RFMO/As. Additionally, failure of any vessel to comply with relevant international law obligations (i.e., the United Nations Convention on the Law of the Sea) while fishing under RFMO/A competence or to cooperate with RFMO/As can lead to an RFMO/A IUU determination. The various RFMO/As that have IUU lists have procedures governing the process through which vessels and operators that have engaged in IUU activities can be listed. These typically include a process through which suspected IUU activities and any supporting evidence are notified to the RFMO/A, who will contact the flag State of the vessel involved and encourage its authorities to conduct their own investigation. The evidence and results of any investigation are then usually presented to the RFMO/A compliance committee and a decision is made regarding whether the vessel or operator should be included on the IUU list.

To answer the question, you will need to verify that these requirements have been met. The way to access relevant information will vary from one RFMO/A to the other. If these requirements have been fulfilled, the subsidy must be removed from the listed fishing vessel, the listed operator, or the support vessel servicing a listed vessel for a period consistent with Article 3.4. This duration must be set taking into account the nature, gravity, and repetition of the IUU fishing activity, and be at least as long as the sanction imposed on the fishing vessel by the coastal Member's authorities lasts, or as long as any RFMO/A listing stands, whichever

³⁴ Note that the IUU determination must also have been made for activities in areas and for species under the RFMO/A competence. RFMOs are typically in charge of managing fisheries within a particular area, and often for particular species. For example, the Indian Ocean Tuna Commission's (IOTC's) remit is the Indian Ocean and adjacent seas, as defined in IOTC's founding agreement and further adjusted by its Commission, and its management mandate covers 16 tuna and tuna-like species. The IOTC's ability to make valid IUU determinations is thus limited to these specific species in that particular area.



is longer (as per Article 3.4). If the requirements have not been fulfilled, then the subsidy prohibition is not triggered by that determination.

Question 4: Peace Clause

- 4a. Has the FSA entered into force less than 2 years ago?
- 4b. Is the Member a developing country Member or LDC Member?
- 4c. Are any of the prohibited subsidies under Article 3 granted or maintained to fishing and fishing-related activities within the Member's EEZ?

This series of questions correspond to Article 3.8, which envisages a 2-year peace clause for subsidies granted or maintained by developing country Members, including LDC Members, to fishing or fishing-related activities within their domestic EEZ. Article 3.8 is referred to as a “peace clause,” which in the WTO context denotes a provision in a WTO agreement that provides for a period during which actions which are prohibited cannot be subject to challenge under WTO dispute settlement. It provides that for a period of 2 years after entry into force of the FSA, subsidies granted or maintained by developing country Members, including LDC Members, to fishing or fishing-related activities within their domestic EEZ cannot be subject to challenge under WTO dispute settlement because they are in breach of the obligation in Article 3.1. The peace clause does not mean that the obligation under Article 3.1 not to grant or maintain subsidies to a vessel or operator engaged in IUU fishing does not apply. In other words, in case of a valid IUU determination, Members continue to have an obligation not to provide subsidies to the incriminated vessel or operator, or any of their support vessels, even if such subsidies are provided for activities occurring within their domestic EEZ. The peace clause simply provides that such obligation cannot be enforced through the dispute settlement mechanism for the duration of the peace clause. It therefore provides developing country Members with a grace period in which to phase out these subsidies without the risk of dispute settlement action.

Questions 4a to 4c list the necessary requirements that need to be fulfilled for the peace clause to apply. If the answer to both questions 4a and 4b is “yes,” then the peace clause provided under Article 3.8 applies to the subsidies for which the answer to Question 4c is also “yes.”

Regarding Question 4a, the answer will depend on when the Checklist is completed. The FSA will come into force once two thirds of WTO Members have formally accepted the FSA by depositing an instrument of acceptance with the WTO.³⁵ Acceptance occurs only after the Member in question completes the domestic processes necessary to accept the FSA, which may include adopting legislation to put the Member into a position to comply with the obligations of the FSA. If the Checklist is completed within 2 years of the date when the FSA enters into force (i.e., the date when two thirds of WTO Members will have deposited instruments of acceptance), the peace clause will apply to subsidies meeting the requirement of Article 3.8 (and addressed in Question 4c). If the Checklist is completed more than 2 years from the date the FSA enters into force, the peace clause will not apply. The 2-year period

³⁵ See Article X:3 of the Marrakesh Agreement Establishing the WTO. For the WTO's Trade Facilitation Agreement, it took more than 2 years before two-thirds of Members had formally accepted the agreement.



is counted from the date the FSA itself enters into force and not from the date the Member formally accepts the FSA.

Question 4b is about the development status of a Member and reflects the fact that only developing country Members and LDCs can benefit from the peace clause. If a Member is an LDC as defined by the UN (see Annex 2 to this Guide), or if a Member is considered a developing country Member of the WTO, the requirement under Question 4b is fulfilled. Note that, contrary to the designation of “LDC,” there is no official definition of “developing country.” WTO Members self-designate whether they are developed or developing.

Question 4c limits the scope of the peace clause to certain subsidies, namely those granted or maintained to fishing and fishing-related activities occurring within the domestic EEZ. To answer the question, refer to Table 2.2.A to identify those subsidy programmes which may be subject to the peace clause. A specific column in that table allows to identify the subsidy programmes that benefit some activities occurring in the domestic EEZ. For such subsidy programmes, the peace clause will apply to the subsidies that are provided to such activities occurring in the domestic EEZ. If all activities occur in the domestic EEZ, then the entire subsidy programme benefits from the peace clause.

In summary, if the FSA entered into force less than 2 years ago and your country is a developing country or LDC Member, then the peace clause applies to the subsidies that are provided to activities which occur within the domestic EEZ.

Ongoing Alignment: Completing Table 3.1.B (IUU fishing subsidy prohibition)

General Considerations

As indicated above, the first obligation under Article 3 is a prohibition to grant or maintain subsidies to vessels or operators subject to an affirmative determination of IUU fishing, or to any support activities, as per Articles 3.1 to 3.4. Whereas Table 3.1.A relates to current alignment with this obligation, Table 3.1.B relates to the implementation steps to be taken to enable ongoing alignment with this obligation. Such implementation steps relate to the question of whether the necessary legislative, regulatory, and/or procedural mechanisms are in place and operate in a way that enables alignment with this obligation on an ongoing basis. In other words, Table 3.1.B addresses whether there is a system in place that operates so that no prohibited subsidy can be provided—that is, when a valid determination is made that a vessel or operator has engaged in IUU fishing, subsidies to that vessel or operator, or to any support activity, are withdrawn and new subsidies are not granted for as long as required by the disciplines.

While Questions 1a and 1b in the Checklist’s Table 3.1.B address situations where IUU determinations are made by your domestic authorities, Questions 2a and 2b look at situations where they are made by other Members or RFMO/As.



Question 1a: Do domestic procedures operate so that an IUU determination by the Member regarding vessels or operators that may receive subsidies from the Member's authorities, as well as information on any relevant support vessel, is communicated in a timely way to the authorities responsible for the granting or maintaining of fisheries subsidies?

This question and the next one relate to situations where IUU determinations are made by your own domestic authorities. Enabling ongoing alignment with the IUU subsidy prohibition (Article 3.1–3.4) in this kind of situation will first require that some type of procedure is in place such that when your domestic authorities make a relevant IUU determination, this information as well as information on any support vessel that services a vessel subject to such determination is promptly communicated to the agencies responsible for administering the fisheries subsidies that may benefit the IUU vessel, operator, or any support vessel. This is important because those agencies will only be able to give effect to the subsidy prohibition if they are informed of relevant IUU determinations.³⁶

You will need to know which government institution is responsible for making IUU determinations. Once an IUU determination has been made relating to a vessel or an operator that may be subsidised by your authorities, such IUU determination should ideally be recorded in a list of relevant IUU determinations, such as Table 2.4. To do this, persons or institutions susceptible of receiving notifications about IUU determinations should be tasked with recording them in such IUU list or swiftly transmitting them to the institution or focal point responsible for updating this list on a regular basis.

Most importantly, a procedure or mechanism needs to be in place that operates in such a way that IUU determinations are promptly communicated to all the government institutions or agencies responsible for the subsidies that may benefit the incriminated vessel or operator. Such communications could take various forms and may, for example, be done by the agency in charge of maintaining the list of IUU determinations (Table 2.4), or by a coordination committee to which such list would be communicated, using Table 2.2.A to identify the subsidies that benefit (or may benefit) the incriminated vessel or operator, and Table 2.1 to identify the authorities responsible for these subsidies. This could relate to different institutions, such as the ministry of fisheries, the ministry of finance, the ministry of trade, among others. A procedure is also required to gather and communicate information on any support vessel that services an IUU vessel with the institutions that may provide subsidies to such support vessel. Here again, this procedure could take different forms, but it would in any case involve the extra step of identifying any vessel that provides support to a vessel that is the subject of an IUU determination and sharing such information with subsidy-granting authorities.

In the table, answer the question and describe your existing procedures providing that relevant IUU determinations made by domestic authorities, as well as information on any support vessel that services a vessel subject to such determination, are promptly communicated to all the institutions providing subsidies (as identified in Table 2.1), including how long it takes to

³⁶ Note that there is nothing in the FSA that requires you to make IUU determinations, which means that this question and the next one only concern situations where such determinations have actually been made.



communicate such information. If such procedures are in place, no further action is required in the context of this question. However, if the necessary procedures are not in place, indicate the steps you will need to take to implement a system that will provide for the appropriate communications to be made in a timely fashion. If you require any technical assistance in setting up the necessary communication mechanisms, indicate exactly what your needs in this regard are. This could, for instance, include support for establishing a coordination committee on fisheries subsidies if you do not have one, or for setting up and operating an IT system for recording all IUU determinations made by your authorities regarding domestic vessels and make it accessible to all relevant authorities that may provide subsidies.

Question 1b: Do the domestic laws, regulations, and/or administrative procedures that govern the provision of subsidies operate so that no subsidy can be granted or maintained to vessels or operators that are subject to an IUU determination by the Member's authorities, or to their support vessels, for a period consistent with Article 3.4?

This question is about what happens once information on relevant IUU determinations made by domestic authorities, as well as information on support vessels that may service IUU vessels that are subject to such determinations, has been communicated to the agencies responsible for providing subsidies. Domestic laws, regulations and/or administrative procedures governing the provision of subsidies will need to operate in such a way that no subsidy can be provided to identified IUU vessels or operators, or to any of their support vessels, for a period consistent with Article 3.4. This will require some kind of system to link information on IUU vessels, operators, or any of their support vessels, to decisions related to the provision of subsidies. This system may be more or less codified: while it may involve legal provisions, it may also rely on purely administrative procedures not set out in laws or regulations.

Regardless of its exact form, there are essentially two functions that such a system must be able to perform: (1) ensuring that *existing* subsidies to identified IUU vessels and operators, or any of their support vessels, are suspended, and (2) preventing *new* subsidies to be provided to such vessels and operators (both for a period consistent with Article 3.4). This is because Article 3.1 provides that no Member shall “grant or maintain” any subsidy to a vessel or operator engaged in IUU fishing or fishing-related activities in support of IUU fishing.

Regarding the first function, when a relevant IUU determination is made, it will be necessary to check whether identified IUU vessels or operators, or any of their support vessels, actually receive subsidies provided by domestic authorities and identify which ones. This can be done by comparing the information included in Table 2.4 and Table 2.2.A (where subsidised vessels and operators have ideally been listed as annexes), or through any other means of obtaining such information. When the identified IUU vessels or operators, or any support vessels, do indeed benefit from subsidies, the provision of these subsidies must be immediately suspended for a period consistent with Article 3.4 (see the specific paragraph on duration below). The second function the system must fulfil is to prevent any new subsidy from being provided to identified IUU vessels or operators, or to any of their support vessels, for a period consistent with Article 3.4. In practice, this means that a check must be made by the subsidy-providing institutions before granting any subsidy to new recipients, to make sure beneficiary vessels or operators have not been the subject of a relevant IUU determination, or do not service vessels



that have been. This can be done using Table 2.4, where relevant IUU determinations should, ideally, have been listed, or through any other means of getting such information.

This system linking IUU information to the provision of subsidies should apply to all the subsidy programmes that fall within the scope of the Agreement, namely subsidies that are specific to marine wild capture fishing and fishing-related activities at sea as per Article 1 of the FSA (which the Member identified in Table 2.1). For all the different subsidies, you will need to check that the laws, regulations and/or administrative procedures governing their application actually allow for the suspension, termination, or non-granting of the subsidy in cases where a vessel or operator is subject to an IUU determination, or if a vessel services an identified IUU vessel. Equally important, such laws, regulations and/or procedures should operate so that the provision of each subsidy is actually conditioned on the absence of an IUU determination for the beneficiary vessels and operators, or for the vessels serviced by the beneficiary vessel, for a period consistent with Article 3.4. If this is not the case, you may have to amend your legislation or procedures to provide for such a system. The laws, regulations, and/or procedures could, for instance, specify the process to be followed for obtaining or renewing a subsidy, including who is responsible for granting or renewing it, when (how soon) the subsidy will be removed, for how long the subsidy will be suspended or not granted, and how the vessel or operator will qualify for the subsidy again.

In terms of the duration of the subsidy prohibition, the relevant laws, regulations and/or administrative procedures will need to be aligned with requirements set forth in Article 3.4. First, the system must operate so that when setting the duration of the prohibition, the nature, gravity, and repetition of the IUU infraction are taken into account. Thus, if it is the first IUU determination against a vessel or operator or if an infraction is minor, the prohibition will be shorter than it would be if the same operator has been found to be engaged in IUU fishing several times before or if the infraction was particularly serious. The system in place should thus make provision for these considerations. Second, the system must also operate so that the subsidy prohibition will apply to the incriminated IUU vessel or operator, or to any support vessel, for at least as long as the IUU vessel or operator is sanctioned or listed by an RFMO/A, whichever is longer. This may be done through laws or regulations that provide for the duration of the prohibition to be set on a case-by-case basis, coupled with a procedure that operates so that duration will be set in accordance with the requirements of Article 3.4. Alternatively, the requirements of Article 3.4 could be specified in a law or regulation.

In the table, describe your existing laws, regulations, and/or procedures in this regard and indicate if all of the requirements are met or whether there are any gaps. If there are no gaps, no further action is needed under this question. However, if there are gaps, indicate what actions would be necessary to address the situation. If this requires a new law, or the amendment of an existing law, indicate who would be responsible for implementing this and how long this will take. If you only need to amend regulations (subordinate legislation), the process may be simpler—in many Member countries the responsible minister can approve the amendment of regulations without further need of parliamentary approval. If you only need to amend administrative procedures, the process could be even simpler. If any amendments to laws, regulations and/or procedures are required, indicate in the table whether you have the capacity to draft and implement the relevant amendments, or whether you require technical assistance in this regard. If you require assistance (such as legislative drafting expertise, or



support in designing the appropriate procedures), indicate in as much detail as possible what assistance you require.

Question 2a: Do domestic procedures operate so that an IUU determination by an RFMO/A or another coastal Member regarding vessels or operators that may receive subsidies from the Member's authorities, as well as information on any relevant support vessel, is communicated in a timely way to authorities responsible for the granting or maintaining of fisheries subsidies?

This question is very similar to question 1a, except that it relates to IUU determinations made by third parties, which can be an RFMO/A or another coastal Member.³⁷ The answer and the information provided in the table may be different depending on the entity making an IUU determination. In general, however, for IUU determinations to be duly acted upon, it is necessary to know how such IUU determinations are relayed to your government, which government institutions are responsible for administering fisheries subsidies that may benefit the incriminated vessel, operator, or any support vessel, and to have a system to ensure such IUU determinations and information on relevant support vessels are communicated to these authorities. This step is essential, as authorities in charge of providing subsidies will only be able to give effect to this prohibition if they are informed of relevant IUU determinations.

To answer the question, you will need to know which government institutions are likely to receive a notification that an IUU determination has been made. Once an IUU notification has been received relating to a vessel or an operator that may be subsidised by your authorities, it should ideally be recorded in a list of relevant IUU determinations, such as Table 2.4 (List of vessels and operators subject to an IUU fishing determination). In this case, persons or institutions susceptible of receiving notifications about IUU determinations should be tasked with recording them in such IUU list or swiftly transmitting them to the institution or focal point responsible for updating this list on a regular basis. A system or procedure may also be established for your authorities to check whether IUU determinations meet the requirements to be valid under the Agreement (as per Article 3.2(c) and Article 3.3), failing which the subsidy prohibition will not be triggered.

Most importantly, there needs to be a procedure or mechanism in place that operates so that relevant IUU determinations are promptly communicated to all the government institutions or agencies responsible for the subsidies that may benefit the incriminated vessels or operators. This could take various forms. This may, for example, be done by the institution responsible for maintaining and updating the list of IUU notifications (Table 2.4), or by a coordination committee to which such list would be communicated, using Table 2.2.A to identify the subsidies that benefit (or may benefit) the incriminated vessel or operator, and Table 2.1

³⁷ This question does not explicitly address situations where an IUU determination has been made by another flag state regarding a vessel that receives subsidies from your authorities. This is because under the FSA, no particular requirements (in terms of the procedures followed, or the evidence used) apply to flag state determinations for such determinations to trigger the subsidy prohibition in Article 3.1, which suggests that Members expected determinations made in a flag state capacity to essentially apply to vessels that fly the subsidizing Member's flag. If, however, your authorities do provide subsidies to vessels that do not fly your flag, you may also want to have laws, regulations and procedures that address possible situations where IUU determination may be made regarding these vessels by the relevant flag state Member(s). The same comment also applies to Question 2b.



to identify the authorities responsible for these subsidies. This could relate to different institutions, such as the ministry of fisheries, the ministry of finance, the ministry of trade, and so on.

A procedure is also required to gather and communicate information on any support vessel that services an IUU vessel with government institutions that may provide subsidies to such support vessel. Here again, this procedure could take different forms. Information may also be gathered in various ways. Some Members may choose—or need, depending on resources available – to rely on possible evidence provided by other Members and RFMO/As that a support vessel has provided at-sea support to an IUU vessel, while others may proactively attempt to determine whether any of the vessels serviced by the support vessels they subsidise have been the subject of an IUU determination.

In the table, answer the question and describe your existing procedures providing that IUU determinations by RFMO/As, flag State Members, or coastal Members that relate to any vessel or operator that may benefit from subsidies from your authorities, as well as information on any relevant support vessel, are promptly communicated to all institutions providing subsidies, including how long it takes to communicate such notifications. If such procedures are in place, no further action is needed under this question. However, if the necessary procedures are not in place, indicate the steps you will need to take to implement a system that will provide for timely communication of such information to the relevant institutions. If you require any technical assistance in doing so, indicate exactly what your needs in this regard are. This could, for instance, include support for establishing a coordination committee on fisheries subsidies if you do not have one, or setting up and operating an IT system allowing relevant authorities to record all IUU determinations made regarding domestic vessels and making it accessible to all relevant authorities that may provide subsidies.

Question 2b: Do the domestic laws, regulations, and/or administrative procedures that govern the provision of subsidies operate so that no subsidy can be granted or maintained to vessels or operators that are subject to an IUU determination by an RFMO or another coastal Member, or to any of their support vessels, for a period consistent with Article 3.4?

This question is very similar to Question 1b but relates to what happens once information on relevant IUU determinations made by other Members or RFMO/As, or information on support vessels that may service IUU vessels that are subject to such determinations, has been communicated to the agencies responsible for providing subsidies. Here again, your domestic laws, regulations, and/or administrative procedures that govern the provision of subsidies will need to operate in such a way that no subsidy can be provided to identified IUU vessels or operators, or to any of their support vessels, for a period consistent with Article 3.4. In essence, a system linking information on IUU vessels, operators, or any of their support vessels to the decisions related to the provision of subsidies needs to be adopted if not already in place. As emphasised under Question 1b, such system may be more or less codified through laws and regulations, or simply involve administrative procedures.

To prevent *existing* subsidies to identified IUU vessels or operators, or to any of their support vessels, from being maintained, the system will need to operate in such a way that IUU



vessels or operators and their support vessels that are actually subsidised are identified (using Table 2.2.A and Table 2.4, or any other way of obtaining this information) and that subsidies being provided to them are suspended for a period consistent with Article 3.4. To prevent any *new* subsidy being provided to identified IUU vessels or operators, or to any of their support vessels, the system will also need a “checking mechanism” that operates in such a way that, before granting any subsidy to new recipients, the system verifies if beneficiary vessels or operators have been the subject of a relevant IUU determination, or if beneficiary vessels service vessels that have been subject to such a determination (which can be done by checking the information listed in Table 2.4, except for support vessels, for which additional information would be needed). If that is the case, no new subsidies shall be provided to such vessels and operators for a period consistent with Article 3.4.

This means that the laws, regulations, and/or procedures governing the provision of relevant subsidies will need to operate so that the provision of each subsidy is conditioned on the absence of an IUU determination for the beneficiary vessels and operators, or for the vessels serviced by the beneficiary vessel, for a period consistent with Article 3.4. If the system does not operate to condition the provision of subsidies in this way, it may be necessary to adopt or amend legislation and/or procedures to provide for such a system. The laws, regulations, and/or procedures could, for instance, specify the process to be followed, including who is responsible for providing the subsidy, when (how soon) the subsidy prohibition will apply, for how long the subsidy will be suspended or not granted, and how the vessel or operator or support vessel can qualify for the subsidy again.

In terms of the duration of the subsidy prohibition, the relevant laws, regulations and/or administrative procedures will need to be aligned with requirements set forth in Article 3.4. First, the system must operate so that when setting the duration of the prohibition, the nature, gravity, and repetition of the IUU infraction are taken into account. Second, the system must also operate so that the subsidy prohibition will apply to the incriminated IUU vessel or operator, or to any support vessel, for at least as long as the IUU vessel or operator is sanctioned or listed by an RFMO/A, whichever is longer. This may be done through laws or regulations that provide for the duration of the prohibition to be set on a case-by-case basis, coupled with a procedure that operates so that duration will be set in accordance with the requirements of Article 3.4. Alternatively, the requirements of Article 3.4 could be specified in a law or regulation.

In the table, describe your existing laws, regulations, and/or administrative procedures in this regard and indicate if they meet all of these requirements, or whether there are any gaps. If there are no gaps, no further action is needed in the context of this question. However, if your current laws, regulations, and/or administrative procedures do not cover all of these issues, indicate the actions that would be necessary to fill this gap. If this requires a new law, or the amendment of an existing law, which will likely require approbation by the parliament and/or head of state, indicate who would be responsible for this and how long this would take. If you only need to amend regulations (subordinate legislation), the process may be simpler—in many Member countries, the responsible minister can approve the amendment of regulations without further need of parliamentary approval. If you only need to amend administrative procedures, the process could be even simpler. If any amendments to laws, regulations, and/or administrative procedures are required, indicate in the table whether you have the capacity



to effect the relevant amendments or whether you require technical assistance in this regard. If you require assistance, indicate in as much detail as possible what assistance you require.

Notification Requirements

As noted at the beginning of Section 3, Article 3 also includes two notification obligations: (1) an obligation on coastal Members to notify to the Committee in charge of administering the Agreement of any affirmative determination of IUU activities made by their authorities (in the last sentence of Article 3.3), and (2) an obligation on subsidising Members to notify measures taken to implement the IUU subsidy prohibition to the Committee (in Article 3.5).

Regarding the first obligation, WTO Members will need to have procedures in place which operate so that when an affirmative IUU determination is made by their authorities, such determination is notified to the Committee. This may be conceived as part of the same system that requires IUU determinations to be communicated to subsidy-granting authorities, except that in this particular case, such information will need to be communicated to the authority responsible for making the notification (such as the ministry of trade), and such authority will need to be formally tasked with the obligation to notify IUU determinations to the Committee (possible via your government's representatives in Geneva). This obligation is addressed in more detail in Section 8 of this Guide, which regroups all transparency and notification obligations included in the FSA. The second obligation is already covered by a more general obligation to notify all implementation measures under the FSA, as per Article 8.3, and is also addressed in Section 8 of this Guide.

Importantly, Article 3.3(b) also provides that for IUU determinations made by coastal Members to trigger the subsidy prohibition in Article 3.1, two particular notification requirements must be met as part of the determination process. The coastal Member making the determination must notify to the flag State Member and, if known, to the subsidising Member: (1) the initiation of an IUU investigation or the temporary detention of a vessel or operator, including reference to relevant factual information and applicable laws, regulations, procedures, or measures; and (2) the final determination, including any sanctions applied and their duration. Although these elements are not notification obligations, they are requirements that will determine whether coastal States' determinations can trigger other Members' obligation not to subsidise IUU vessels, operators, or IUU-supporting vessels. As such, they are important to follow for any coastal Member wanting to ensure its IUU determinations have an impact in the context of the Article 3.1 subsidy prohibition.



3.3 Due Regard and Appropriate Action Obligation (Article 3.6)

Summary box

Obligation: A subsidising Member shall (1) give due regard to a notification by a port State Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, and (2) take appropriate actions in respect of its subsidies.

Note: The provision relates only to a “vessel” and does not extend to the operator of the vessel. It also relates only to a vessel in one of the port State Member’s ports, and not in its EEZ.

Relevant Legal Text

ARTICLE 3: SUBSIDIES CONTRIBUTING TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴

[...]

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

⁴ “Illegal, unreported and unregulated (IUU) fishing” refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

Current Alignment: Completing Table 3.2.A (Due regard and appropriate action obligation)

General Considerations

The second obligation in Article 3 relates to situations where a subsidising Member receives a notification from a port State Member it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing (Article 3.6). In this situation, this double obligation requires the subsidizing Member to (1) give due regard to the information received, and 2) take appropriate actions in respect of its subsidies. It is important to note that this obligation is incurred even in the absence of an affirmative determination of IUU fishing (which is required under Articles 3.1 to 3.5), but where the port State Member indicates that it has “clear grounds to believe” that a vessel has been engaged in IUU fishing.

The FSA does not provide guidance on how this double obligation should be carried out. However, giving “due regard” to the information received from the port State Member may be understood to mean that the subsidising Member would be expected to carefully consider



and evaluate the information received from the port State Member.³⁸ In addition to having to give due regard to the information received, the subsidising Member must take “appropriate” actions in respect of its subsidies, which could include initiating a domestic investigation into the vessel’s activities, if the Member considers this is warranted. In cases where the Member’s own investigation process would result in a determination of IUU fishing, the subsidy prohibition in Article 3.1 would then apply (see Section 3.1).

While Question 1a addresses whether your authorities have received a relevant notification from a port State Member, Question 1b and Question 1c relate to whether your authorities have given due regard to the information provided by the port State Member and taken appropriate actions with regard to fisheries subsidies, respectively.

Question 1a: Has a port State Member notified the Member that it has clear grounds to believe that a subsidised vessel in one of its ports has engaged in IUU fishing, and is the vessel referred to in such notification subsidised by the Member?

To answer the first part of the question, you will need check whether your authorities have received a notification from a port State Member that it has clear grounds to believe that a vessel in one of its ports, and which your authorities may subsidise, has engaged in IUU fishing. The FSA does not indicate how such notification should be made. Accordingly, the notification could *inter alia* have been sent to the subsidising Member’s fisheries ministry or foreign affairs ministry, through a statement delivered at a meeting of the WTO Committee on Fisheries Subsidies, to the subsidising Member’s representative office in Geneva, or to its embassy in the port State Member. Making that verification may thus involve checking with various agencies or institutions whether such port State notification was received, but this may be easier if you already have a system or procedure in place whereby any such notification is communicated promptly by the recipient to one single agency or institution.

If any such notification was received, it will be necessary to check whether any vessel (but not operator) subject to a “clear grounds” notification is a vessel that is currently subsidised. This can be done by using Table 2.2.A (Information on subsidised fisheries), which should ideally include a list of subsidised vessels, or through any other means of obtaining such information. If a list of subsidised vessels is not readily available, the agency that received or collected such notification will need to communicate with the authorities responsible for fisheries subsidies in order to check whether the concerned vessel(s) actually benefit from subsidies provided by your authorities.

If any such port State notification regarding IUU fishing has been received regarding a vessel that receives subsidies from your authorities, your authorities will need to give due regard to the information provided by the port State and take appropriate actions (See Questions 1b and 1c). If no such notification was received, or if the concerned vessels are not subsidised,

³⁸ The provisions of WTO agreements are to be interpreted in accordance with the customary rules of interpretation of public international law, which the Appellate Body has determined include Article 31 of the Vienna Convention on the Law of Treaties. (See Appellate Body Report, United States – Reformulated Gasoline (WT/DS2/AB/R), p. 17.) Article 31 provides that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.



there is no further action that needs to be taken in the context of this question, and you can skip questions 1b and 1c.

Question 1b: Did the Member give due regard to the information received from the port State Member?

This question and the next one relate to what your authorities need to do in case a port State notification regarding IUU fishing has been received by your authorities regarding a vessel that is subsidised by your authorities. In such a situation, the relevant authorities—most likely the authorities responsible for fisheries monitoring, control, and surveillance and IUU investigations, but this could also be another government institution assigned to perform such task—first need to give due regard to the information received from the port State.

To answer the question, you will thus need to check whether due regard has been given by your authorities to the information provided by the port State in its notification. While the FSA gives no specific guidance on what giving due regard means, the ordinary meaning of “giving due regard” suggests that such information must be carefully considered.

If due regard has been given to the information provided by the port State Member in its IUU notification, your authorities will need to take appropriate actions in respect of the fisheries subsidies provided to the concerned vessel and possible its support vessels (see Question 1c). If, however, due regard has not been given to such information, your authorities must do so and then take appropriate actions in respect of subsidies.

Question 1c: Did the Member take such actions in respect of its subsidies as it deemed appropriate?

You will have to respond to Question 1c if:

- You have received a relevant IUU notification from a port State Member regarding a vessel that may be subsidised by your authorities (as per Question 1a); and
- Your authorities have given due regard to the information provided by the port State in such notification (as per Question 1b).

To answer that question, you will need to check whether your domestic authorities have taken appropriate actions under the circumstances. The FSA does not indicate what such appropriate actions would be. However, Article 3.6 must be interpreted in the light of its context,³⁹ namely, inclusion within an article (Article 3) whose object and purpose are to prohibit granting or maintaining subsidies to IUU fishing. Thus, although not explicitly indicated, appropriate actions under Article 3.6 would include actions consistent with this object and purpose. In practice, three broad types of situations are conceivable, depending on what the conclusion of your authorities is after giving due regard to the information provided by the port State Member.

First, your authorities may assess that there is sufficient evidence provided by the port state Member to justify the initiation of a domestic investigation, which might include requesting information from RFMOs or other authorities, to establish whether such vessel has engaged

³⁹ See footnote 38 regarding rules for interpreting provisions of WTO agreements.



in IUU fishing. The conclusion of that process may result in a determination of IUU fishing in your authorities' capacity as flag state of the vessel, for example. If that is the case, the subsidy prohibition in Article 3.1 would then apply, and your authorities would have an obligation not to maintain or grant subsidies to the vessel in question, or to any of its support vessels, for a period consistent with Article 3.4 (See Section 3.1). Your authorities may also conclude, after further investigation, that the concerned vessel has not engaged in IUU. Article 3.6 does not specify what action should be taken in such a case. However, under such circumstances, "appropriate" action may be to maintain any existing subsidy and allow the concerned vessel (and its support vessels) to be granted new subsidies.

Second, it is also possible that your authorities assess that there is not sufficient evidence to initiate a domestic investigation, but that some other actions would be appropriate. This could, for example, include issuing a warning to that vessel, including a reminder of the conditions that govern the eligibility for receiving subsidies (including the absence of IUU fishing activity by subsidy recipients).

Third, your authorities may conclude, after giving due regard to the information provided by the port State member, that the IUU allegations are unfounded. Here again, "appropriate" action may be to maintain any existing subsidy and allow the concerned vessel (and its support vessels) to be granted new subsidies.

Given that the FSA is not prescriptive regarding possible appropriate actions, it is also within your authorities' discretion to take other appropriate actions, including at an earlier stage of the process, which could include the suspension of subsidies pending the outcome of an investigation or consultations with the port State Member.

If appropriate actions have not been taken by your authorities regarding relevant subsidies, such actions will need to be taken. If, however, such appropriate actions have already been taken, there is no further action that needs to be taken in the context of this question.

Ongoing Alignment: Completing Table 3.2.B (Due regard and appropriate action obligation)

General Considerations

As explained above, the obligation under Article 3.6 requires subsidising Members to give due regard to a notification from a port State Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing and to take appropriate actions with regards to the subsidies provided to such vessel. While Table 3.2.A relates to your government's current alignment with this obligation, Table 3.2.B relates to the implementation steps to be taken to enable ongoing alignment with that obligation. In other words, it addresses the question of whether the necessary laws, regulations, and/or administrative procedures are in place and operate in a way that when a notification is received from a port State Member regarding IUU fishing, due regard is given to the information provided by that Member and appropriate actions are taken with regards to fisheries subsidies.

Question 1a relates to the procedures needed so that when an IUU-related notification is received from a port State Member, this information is promptly communicated to the



relevant domestic authorities. The following questions address whether domestic laws, regulations, and/or administrative procedures operate so that due regard is then given to the information provided by the port State (Question 1b) and appropriate actions are taken in respect of fisheries subsidies provided to the concerned vessel (Question 2).

Question 1a: Do domestic procedures operate so that a notification that has been received from a port State Member regarding possible IUU fishing by a vessel that may receive subsidies from the Member's authorities is promptly communicated to the relevant domestic authorities?

This question relates to situations where your authorities receive a notification from a port State Member indicating that this Member has clear grounds to believe that a vessel that may be subsidised by your authorities engaged in IUU fishing. In such a situation, a procedure will be needed that operates so that such notification is promptly communicated to relevant domestic authorities. Such authorities are those that would be responsible for giving due regard to IUU-related information in your domestic system, and could typically include the institution(s) in charge of fisheries monitoring, control, and surveillance and IUU fishing investigations. Depending on the circumstances, information about such IUU notifications could also be communicated to all authorities responsible for providing or overseeing fisheries subsidies, and such authorities may decide to suspend subsidies to the concerned vessels (or any of their support vessels) until your authorities assess whether these vessels indeed engaged in IUU fishing.

If not already in place, a procedure could be established to record any IUU notifications received from port State Members in a list of relevant IUU determinations and notifications, such as an expanded version of Table 2.4 (List of vessels and operators subject to an IUU fishing determination).⁴⁰ To do this, persons or institutions susceptible of receiving IUU notifications from port State Members through any channel could be tasked with recording them in such IUU list or swiftly transmitting them to any institution or focal point that would be responsible for updating this list on a regular basis.

Regardless of its exact shape and whether an actual list is maintained, some kind of system will need to be in place that operates so any time an IUU notification is received from a port State Member, this information is promptly shared with the authorities that are competent for carefully considering such information and determining whether there is sufficient evidence to conclude that the concerned vessel has engaged in IUU fishing. Importantly, such system would need to involve any institution that may receive an IUU notification from a port State, which may include your government's office in Geneva, your government's embassy in the port State, or the ministries of foreign affairs, fisheries, or trade. The procedures in place may also include guidelines on the maximum time by which any relevant IUU notification from a port State should be relayed to your authorities in charge of giving due regard to the information received in the notification.

In the table, answer the question and describe your existing procedures providing that IUU notifications from port States that relate to any vessel that may benefit from subsidies from

⁴⁰ Note that Table 2.4 does not require the inclusion of port State notifications, but your authorities may decide to include such notifications in that table.



your authorities are promptly communicated to relevant authorities—that is, the authorities responsible for giving due regard to such information. You may also want to indicate how long it would typically take to communicate such notifications. If such procedures are in place, no further action is needed under this question. However, if the necessary procedures are not in place, indicate the steps you will need to take to implement a system that will provide for timely communication of such information to the relevant authorities. If technical assistance would be needed to undertake these actions, indicate what your needs in this regard are in as much detail as possible.

Question 1b: Do domestic laws, regulations, and/or administrative procedures operate so that due regard has to be given by domestic authorities to information received from a port State Member regarding possible IUU fishing?

This question relates to the first part of the obligation in Article 3.6, which requires your authorities to give due regard to information received through a notification from a port State regarding possible IUU fishing by a vessel that may be subsidised by your authorities. As explained above, the FSA does not provide specific guidance on what due regard means, but the ordinary meaning of these terms suggests that careful consideration of the information provided by the port State is required. This means that a system will need to be in place that operates so that, in such situations, your relevant authorities must give due regard to the information provided by the port State Member. This question deals specifically with whether such a system is in place, but it should be noted that this system may take various forms and may be more or less codified: it may involve legal provisions, but may also rely on purely administrative procedures.

To make sure that such a system is in place, you would likely need to designate an authority or a body (for example, an interinstitutional committee) to be responsible for evaluating the information provided by the port State Member. This could be done in legislation or in regulations. Each Member may have different institutions that would be best suited to perform this task, including within the ministry of fisheries, the ministry of justice or internal affairs, the ministry of agriculture, or another agency, depending on domestic allocations of responsibilities. If there is an institution responsible for fisheries monitoring, control, and surveillance and IUU fishing investigations, it could be a suitable agency for such task; the FSA is not prescriptive in this respect. If an interinstitutional committee exists that is tasked with overseeing the implementation of the FSA, such body could also be responsible for coordinating this due regard process with the relevant authorities.

While Article 3.2 clearly states that a vessel or operator shall be considered to be engaged in IUU fishing if an IUU determination is made by a coastal Member, a flag State Member, or a relevant RFMO/A, IUU notifications received from port State Members as per Article 3.6 are not granted the same status. It is, therefore, up to the subsidising Member to give due regard to the information received and exercise its own judgement as to what would be the appropriate actions to take in respect of subsidies (see Question 2 regarding “appropriate actions”). It is the responsibility of the port State Member to provide you with evidence of the clear grounds it has to believe that the concerned vessel has engaged in IUU fishing. Accordingly, your relevant authorities must carefully consider the evidence provided by the port State Member, but they do not need to seek out additional information. They may,



nonetheless, decide to do so if after giving due regard to the information provided by the port State Member, they determine that initiating their own investigation is warranted.

In the table, answer the question and describe your existing laws, regulations, and/or administrative procedures providing that due regard has to be given to the information provided in relevant IUU notifications received from port State Members. If such procedures are in place, no further action is needed under this question. However, if domestic laws, regulations, and/or procedures do not operate in such a way, indicate the steps you will need to take to implement the necessary changes. These changes could include designating, perhaps in legislation or in regulations, which authority is responsible for giving due regard to the notification and what procedures it will follow in considering the information provided in the notification. The exact design of the system is entirely within the discretion of your government, as long as it provides that due regard has to be given in relevant circumstances.

If technical assistance would be needed to undertake these actions, indicate what your needs in this regard are. Be as specific as you can, indicating what your technical assistance and capacity building needs are in as much detail as possible (for example, drafting legislation and regulations, drafting procedures to be followed by authorities when giving due regard to the information received by the port State Member, strengthening relevant staff's capacity to evaluate information related to IUU notifications, etc.).

Question 2: Do domestic laws, regulations and/or administrative procedures operate so that the Member's authorities have to take appropriate actions in respect of fisheries subsidies in response to information received from a port State Member regarding possible IUU fishing?

This question relates to the second part of the obligation in Article 3.6, which requires your authorities to take appropriate actions in respect of fisheries subsidies following a notification received from a port State regarding possible IUU fishing activity by a vessel that may be subsidised by your authorities. Domestic laws, regulations, and/administrative procedures will thus need to operate so that such appropriate actions are taken. These actions refer to the subsidy-related actions that need to be taken by your authorities once due regard has been given to the information provided by the port State, but they may also include actions that must be taken prior to such subsidy-related actions, including undertaking further investigation to establish whether the concerned vessel has indeed engaged in IUU fishing. These actions may also include actions to be taken while your relevant authorities give due regard to the information received from the port State Member, for example by providing for the immediate suspension of any relevant subsidy until there is a formal decision on whether the vessel engaged in IUU fishing.

Article 3.6 is not prescriptive in terms of what "appropriate" actions must be taken by a subsidising Member following the receipt of an IUU notification from a port State Member. However, reading Article 3.6 in its context—that of an article whose main purpose is to prohibit subsidies to IUU vessels and operators, and to any of their support vessels—provides some guidance on what such appropriate actions may be.

In cases where your authorities consider that the evidence provided by the port state Member is credible, the system in place may provide for the initiation of a domestic investigation. Your



authorities may then conclude—following domestic procedures—that the concerned vessel has engaged in IUU fishing and make an IUU determination regarding the concerned vessel in a flag state capacity. In such situations, appropriate actions would be those that would follow from a flag state determination, and the mechanisms required for ongoing alignment are similar to those already in place to ensure alignment with the obligation to remove subsidies in cases of flag state determinations. Such mechanisms will need to fulfil two functions: (1) suspend or terminate *existing* subsidies to the concerned vessel, or to any of its support vessels, and (2) prevent *new* subsidies from being provided to that vessel or its support vessels (both for a period consistent with Article 3.4).

Fulfilling these two functions would first require a mechanism to transmit information about the IUU vessel to the authorities responsible for fisheries subsidies, which may involve various institutions. This could be done by maintaining a list of IUU determinations made by domestic authorities (such as Table 2.4) and making it accessible to authorities responsible for fisheries subsidies. Both of these functions may involve subsidy-related actions regarding the IUU vessel but also regarding any support vessel that may service that IUU vessel. If any such support vessel may receive subsidies from your authorities, a mechanism would also be required to gather and communicate information on any support vessel that services the concerned IUU vessel with government institutions that may provide subsidies to such support vessel.

Regarding the first function, and once authorities responsible for fisheries subsidies have access to the required information, a system would need to be in place to check whether the concerned IUU vessel or any of its support vessels benefits from subsidies provided by your authorities. This could be done by using the information included in Table 2.2.A (Information on subsidised fisheries), where subsidised vessels have ideally been listed as annexes, or through any other means of obtaining such information. If that is the case, relevant subsidies should be terminated or suspended for a period consistent with Article 3.4. The second function would not require a check of current subsidisation, but the system in place would need to operate so that no new subsidy can be provided to the IUU vessel or any of its support vessels for a period consistent with Article 3.4.

In cases where your authorities assess that the IUU allegations are unfounded or that, after conducting their own investigation, there is no sufficient evidence to conclusively confirm the IUU activity, the system may simply provide for the continuation of any existing subsidy to the concerned vessel or any of its support vessels, while also allowing for the granting of new subsidies to such vessels. If the IUU activity is not confirmed but doubts persist on whether or not the vessel has engaged in IUU fishing, the system may also provide for other actions, such as issuing a warning to that vessel, including a reminder of the conditions that govern the eligibility for receiving subsidies (including the absence of IUU fishing activity by subsidy recipients).

In the table, describe your existing laws, regulations, and/or administrative procedures in this regard and indicate if they meet these requirements, or whether there are any gaps. If there are no gaps, no further action is needed in the context of this question. However, if your current laws, regulations, and/or administrative procedures do not cover all of these issues, indicate the actions that would be necessary to fill this gap. If this requires a new law, or the



amendment of an existing law, which will likely require approval by the parliament and/or head of state, indicate who would be responsible for this and how long it would take. It may be that a new law will be needed to implement the FSA domestically. If so, the law could include the actions to be taken in responding to receipt of notifications from port State Members under Article 3.6. If you only need to amend regulations (subordinate legislation), the process may be simpler—in many countries, the responsible minister can approve the amendment of regulations without further need of parliamentary approval. If you only need to amend administrative procedures, the process could be even simpler.

If any amendments to laws, regulations, and/or administrative procedures are required, indicate in the table whether you have the capacity to effect the relevant amendments, or whether you require technical assistance in this regard. If you require assistance, indicate in as much detail as possible what assistance you require.

3.4 Obligation to Have Laws, Regulations, and Procedures in Place (Article 3.7)

Summary box

Obligation: Each Member shall have laws, regulations and/or administrative procedures in place to ensure that no subsidies are granted or maintained to any vessel or operator engaged in IUU fishing, or to any of their support vessels, for a period consistent with Article 3.4.

Note: The provision relates both to subsidies existing at the time the FSA comes into operation and any subsidies granted at a later stage.

Relevant Legal Text

ARTICLE 3: SUBSIDIES CONTRIBUTING TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴

[...]

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

⁴ “Illegal, unreported and unregulated (IUU) fishing” refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.



Current and Ongoing Alignment: Completing Table 3.3A (Obligation to have laws, regulations, and procedures in place)

General Considerations

Article 3.7 contains an obligation to have legislation and/or procedures in place upon the entry into force of the FSA to ensure that no subsidies are granted or maintained to vessels or operators engaged in IUU fishing, or to any of their support vessels. It is essentially about having a system in place to ensure ongoing alignment with the IUU subsidy prohibition found in Article 3.1. This is the type of considerations that is generally addressed in ongoing alignment tables. In the case of Article 3.7, however, this type of ongoing alignment mechanism is explicitly required by the obligation in question, meaning that its existence is both a question of ongoing alignment and current alignment with the FSA. For this reason, this obligation is addressed through one single table which combines aspects related to both current alignment and ongoing alignment. It only includes one question.

Question 1: Does the Member have laws, regulations, and/or administrative procedures in place that ensure that no subsidies are granted or maintained to vessels or operators engaged in IUU fishing, or to their support vessels, for a period consistent with Article 3.4?

In the context of this obligation, the only (but broad) requirement is that the Member must have “laws, regulations and/or administrative procedures” in place upon entry to force of the FSA to ensure that no subsidies are granted or maintained to vessels or operators found to be engaging in IUU fishing, or to any of their support vessels, for a period consistent with Article 3.4.⁴¹ This relates to situations in which an IUU fishing determination is made by a coastal Member, a flag State Member, or an RFMO/A (as provided for under Articles 3.2 and 3.3), and could also be relevant following an IUU notification received from a port State Member (as provided for under Article 3.6) if prohibiting subsidies is deemed to be an “appropriate” action under the circumstances, as described in section 3.2.B above. The legislation and/or administrative procedures must address both the subsidies already in place at the time the FSA enters into force (that are not to be maintained), as well as any new subsidies (that are not to be granted after the FSA has entered into force).

The FSA does not provide guidance on what should be included in the legislation and/or administrative procedures, the form such legislation and/or administrative procedures should take, or under which government institution’s jurisdiction the legislation and/or administrative procedures should be. A Member could have various pieces of legislation and/or administrative procedures under the auspices of the different institutions that are responsible for fisheries subsidies. The FSA indicates that each Member shall have laws, regulations “and/or” administrative procedures in place. WTO panels have indicated that the word “or” means that there is a choice between the different options,⁴² that is, a Member could simply have

⁴¹ According to Article 3.4, the duration of the subsidy prohibition must: (1) be set taking into account the nature, gravity and repetition of the IUU infraction; and (2) be at least as long as the sanction resulting from the IUU determination, or as long as the vessel or operator is listed by an RFMO/A, whichever is longer.

⁴² See Panel Reports, *China – Broiler Products* (WT/DS427/R), para. 7.416 and *EC – Salmon (Norway)* (WT/DS337/R), para. 7.165.



administrative procedures in place to ensure that no subsidies are granted or maintained on IUU fishing without having legislation in place as well. The use of the conjunction “and/or” means that a Member may have both legislation and administrative procedures (“and”), or alternatively it may have either legislation or administrative procedures (“or”) in place.

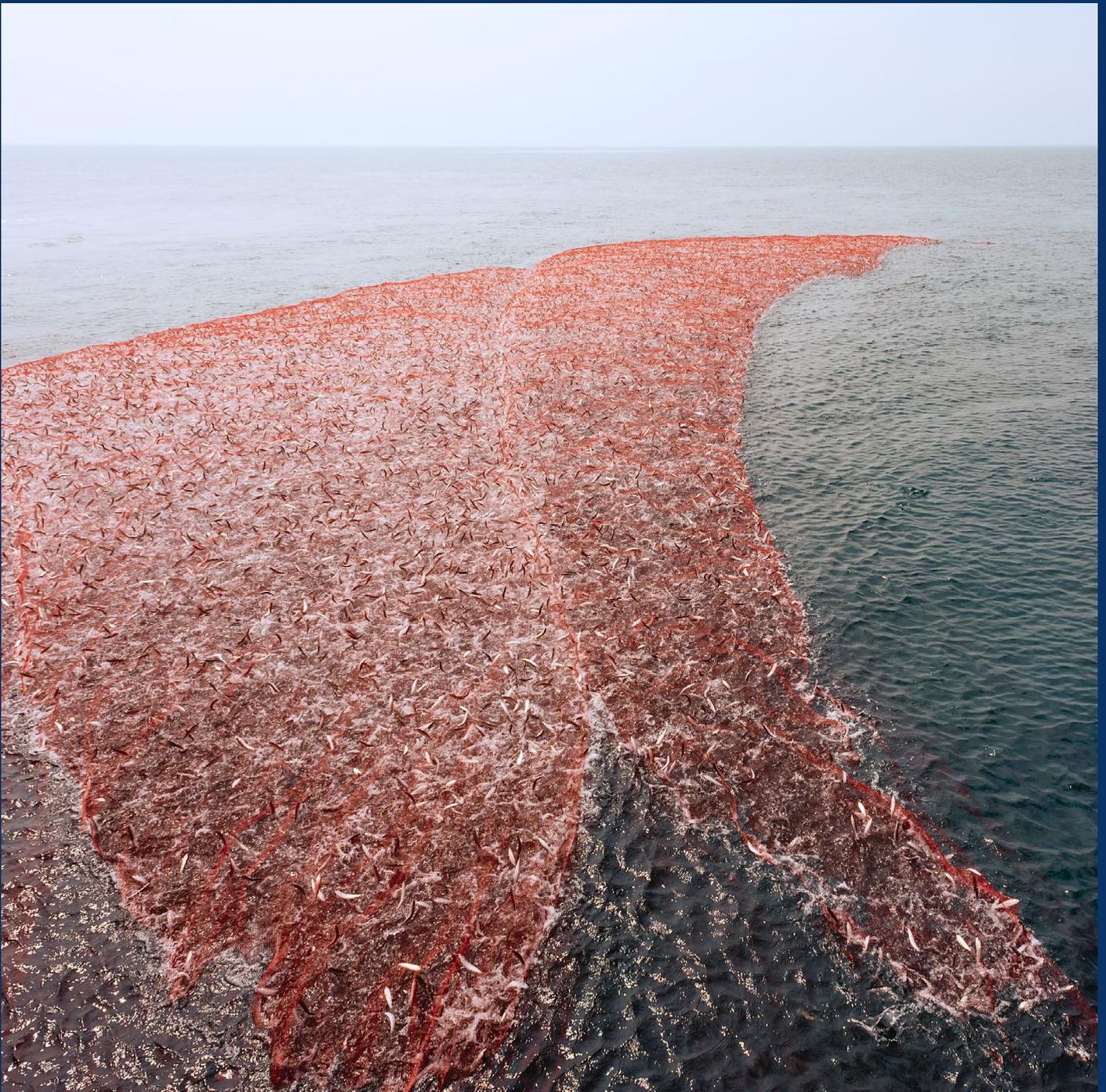
Thus, the form and format are entirely within a Member’s discretion. The only requirement is that some type of system ensures that no subsidy prohibited under the Article 3.1 IUU subsidy prohibition are provided for a period consistent with Article 3.4. This question is very similar to the questions asked in Table 3.1.B, which is about the mechanisms required to enable ongoing alignment with the IUU subsidy prohibition in Article 3.1. Reading the explanations related to these questions in Table 3.1.B will thus be useful and help you get a more concrete sense of the various aspects that the relevant laws, regulations, and/or procedures should address.

In the table, answer the question by indicating whether you have laws, regulations and/or administrative procedures in place that ensure that no subsidy is granted or maintained to vessels and operators engaged in IUU fishing, or any of their support vessels, for a period consistent with Article 3.4. Describe existing laws, regulations and/or administrative procedures in that regard and indicate whether there are any gaps. If there are no gaps, no further action is needed under this question.

If you do not have the necessary legislation and/or procedures in place, these must be developed as a priority. They must be drafted and operate in a way that ensures that subsidies are not granted or maintained to vessels engaged in IUU fishing, or to any of their support vessels, for a period consistent with Article 3.4. You may need to establish or amend pieces of legislation, sub-ordinate legislation (regulations), and/or administrative procedures. Indicate to what extent new laws, regulations and/or administrative procedures will need to be developed, or existing ones will need to be amended, in order to achieve alignment with the obligation in Article 3.7, providing as much detail as possible on what needs to be done. This may, for instance, include a requirement for public consultations before a legislation may be adopted. If so, you may indicate how long this may take. You may also want to provide information on which ministry, department or other government institution will be responsible for drafting or amending a piece legislation, or establishing a procedure; whether Treasury has to be involved in the process in addition to the government institution or agency responsible for fisheries; what role would other institutions play in the process; etc. Drafting or amending legislation could be an opportunity to legally define all the processes required to implement Article 3, including by establishing the required interinstitutional, regional, or international information collection and exchange mechanisms, as well as the mechanisms to prevent prohibited subsidies from being provided once the required information has been shared with authorities responsible for fisheries subsidies. If you require assistance (such as legislative drafting expertise, or support in designing the appropriate procedures), indicate in as much detail as possible what assistance you require.

4.0

Overfished Stocks





4.1 Introduction

Article 4 contains a single obligation: an obligation on Members not to grant or maintain subsidies for fishing or fishing-related activities regarding overfished stocks (see Article 4.1), except if such subsidies or other measures are implemented to rebuild the overfished stock(s) (see Article 4.3). Subsidies provided by developing country Members to fishing and fishing-related activities occurring within their EEZ benefit from a 2-year peace clause, during which time those subsidies are exempt from any action under the WTO dispute settlement mechanism that would be based on this prohibition.

4.2 Overfished Stocks Subsidy Prohibition (Article 4)

Summary box

Obligation: No Member shall grant or maintain subsidies for fishing or fishing-related activities regarding an overfished stock. Stocks are considered to be “overfished” if recognised as such by the coastal Member under whose jurisdiction the fishing is occurring or by an RFMO/A for fisheries under its competence.

Exemption: A Member may continue to provide subsidies if either (1) such subsidies, or (2) other measures (such as fisheries management measures), are implemented to rebuild the relevant overfished stock(s) to a biologically sustainable level.

S&D provision (peace clause): Subsidies provided by LDC and developing country Members within their EEZ cannot be challenged through the WTO’s dispute settlement mechanism because of a breach of this obligation during the first 2 years after entry into force of the FSA.

Note: The text does not oblige Members to make stock assessments, but only not to provide subsidies for activities regarding stocks that are recognised as overfished by the relevant coastal Member or RFMO/A.

Relevant Legal Text

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

- 4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.
- 4.2 For the purpose of this Article, a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.



- 4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.¹¹
- 4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the EEZ shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

¹¹ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.

Current Alignment: Completing Table 4.A (Overfished stocks subsidy prohibition)

General Considerations

As indicated above, the only obligation under Article 4 is a prohibition to grant or maintain subsidies for fishing or fishing-related activities regarding overfished stocks (Article 4.1). The prohibition does not target a particular type of subsidy scheme but rather situations in which stocks are overfished. When this is the case, it requires WTO Members not to provide subsidies falling under the scope of the Agreement to fishing and fishing-related activities regarding these stocks.

According to Article 4.2, the prohibition is triggered when either the coastal Member under whose jurisdiction the fishing is taking place (which could include the subsidising Member) or a relevant RFMO/A in areas and for species under its competence recognises that a stock is overfished. This reflects the fact that in practice, the decision that a stock is overfished is usually the result of stock assessments conducted by expert scientific bodies, which can be made at either the national or international level, with the latter particularly relevant for shared stocks. The concept of MSY is often used as a basis for establishing the status of the fish stock, with fisheries authorities defining the level of biomass that can produce MSY (or a proportion of that level) as a signpost below which a stock is considered to be overfished. Depending on the nature of a fishery, other reference points may also be used, either because they are considered more appropriate than MSY-based reference points or because data and resource limitations prevent the use of such MSY-based reference points.

Regardless of which entity recognises a stock as overfished, Article 4.2 also specifies that for such recognition to trigger the subsidy prohibition, it must be based on the best scientific evidence available to the relevant coastal Member or RFMO/A. The best scientific evidence available to a coastal Member will likely be the evidence gathered by national research and scientific institutions responsible for assessing the status of marine fish stocks, or by internationally organised scientific cruises tasked with assessing stocks in coastal Members' waters. In the context of an RFMO/A, the evidence provided by the RFMO/A's scientific



committee, taking advice from its working parties or working groups where appropriate, would likely be considered the best available scientific evidence.

Although not specified, it is important to note that nothing in Article 4 requires Members to undertake stock assessments to determine if stocks are overfished or not. A Member thus cannot be challenged under the WTO dispute settlement mechanism for not undertaking an assessment and recognizing a stock as overfished. However, if and when a stock assessment is carried out and a stock is recognised as overfished by a coastal Member or an RFMO/A, the subsidizing Member must apply the prohibition.

When a stock is recognised as overfished according to Article 4.2, the obligation not to provide subsidies is automatic. However, the Agreement also provides flexibility by allowing subsidies to continue when they or other measures (such as fisheries management measures) are implemented to rebuild the stock to a biologically sustainable level (Article 4.3). According to footnote 11 to the FSA, such level is “the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing-related activity is taking place, using reference points such as MSY or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.”

Article 4.4 also contains a peace clause, in terms of which LDCs’ and developing country Members’ subsidies provided to fishing or fishing-related activities occurring within their EEZ cannot be challenged under the WTO dispute settlement mechanism because of a breach of this obligation for a period of 2 years after entry into force of the FSA.

Questions 1 to 3 in the Checklist are about determining whether some of your subsidies are provided regarding stocks that are recognised to be overfished under Article 4.2, including the requirement that such recognition is based on the best scientific evidence available to the relevant coastal Member or RFMO/A. While Question 1 addresses stocks recognised as overfished by your authorities, Questions 2 and 3 are about stocks recognised as overfished by other coastal Members and RFMO/As, respectively. For subsidies that are provided regarding overfished stocks, Question 4 will allow you to determine whether such subsidies can benefit from the management-based flexibility in Article 4.3 and may thus continue to be provided. Subsidies that do not benefit from this flexibility are prohibited. Finally, Question 5 helps you determine whether the peace clause under Article 4.4 applies to your subsidies.

Note that while the remainder of this section does not provide specific guidance on how to fill out the “Relevant information” column of Table 3.1.A, this column should be used to indicate any useful information that supports your answer in the “Yes/No” column and that you would like to keep a record of.

Question 1: Does the Member grant or maintain subsidies for fishing or fishing-related activities in its EEZ regarding a stock which the Member recognises as overfished?

This question envisages the situation where your authorities provide subsidies to fishing or fishing-related activities that occur within your own EEZ regarding a stock that is recognised as overfished by your domestic authorities (in a coastal State capacity).



To answer the question, you will need to identify the stocks that are exploited in the context of fishing and fishing-related activities that occur within your EEZ and that benefit from subsidies provided by your authorities, and to check if any of these stocks is recognised as overfished by your authorities. This could be done by using Table 2.2.A (Information on subsidised fisheries) and Table 2.3 (Information on stocks fished in subsidised fisheries), or through any other means of obtaining such information. Based on this information, you will need to determine if any of these stocks is recognised as overfished by your authorities. It should also be noted that to trigger the subsidy prohibition under Article 4.1, a recognition that a stock is overfished should be based on the best scientific evidence available to your authorities. In that specific case, however, it is unlikely that the nature of the evidence used will be questioned by your government, since your own authorities will have made that recognition.

If subsidies are provided by your authorities to fishing and fishing-related activities in your EEZ regarding a stock that your authorities recognise as overfished, then these subsidies are prohibited and will need to be brought into alignment with the requirements of Article 4, unless they are allowed under the flexibility in Article 4.3 (See Question 4 below). If no subsidies are provided to activities in your EEZ regarding overfished stocks, there is no further action that needs to be taken in the context of this question.

Question 2a: Does the Member grant or maintain subsidies for fishing or fishing-related activities regarding a stock that is recognised as overfished by another coastal Member under whose jurisdiction the fishing is taking place?

This question envisages the situation where your government provides subsidies to fishing or related activities in another Member's EEZ regarding a stock that is recognised as overfished by this coastal Member.

To answer the question, you will need to identify the stocks concerned by fishing and fishing-related activities that occur in other Members' EEZs and that your authorities subsidise, as well as on the status of such stocks. This could be done by using Table 2.2.A (Information on subsidised fisheries) and Table 2.3 (Information on stocks fished in subsidised fisheries), or through any other means of obtaining such information. You will need to check if any of these stocks is recognised as overfished by the relevant coastal Member.

If subsidies are provided by your authorities to fishing and fishing-related activities regarding a stock that is recognised as overfished by the coastal Member under whose jurisdiction fishing is taking place, you will need to check if that recognition was based on the best scientific evidence available to that coastal Member (see Question 2b). If that is the case, these subsidies will be prohibited and will need to be brought into alignment with the requirements of Article 4, unless they are allowed under the flexibility in Article 4.3 (see Question 4 below). If no subsidies are provided to activities in another Member's EEZ regarding stocks which that Member recognises as overfished, there is no further action that needs to be taken in the context of this question.



Question 2b: Has the decision to recognise the relevant stock as overfished been taken by the relevant coastal Member based on the best scientific evidence available to that Member?

This question addresses the evidence basis for the coastal Member's stock status decision, which will determine whether such decision triggers an obligation for your authorities not to subsidise fishing and fishing-related activities regarding the concerned stock.

To answer the question, you will need to verify if the best scientific evidence available to the coastal Member has been used to determine the status of the stock. There is no standard way of doing this, but you could start by checking whether the status of the stock has been clearly established on the basis of the latest stock assessment conducted by the relevant coastal Member. In general terms, you should check whether better scientific evidence is available to the coastal Member and has not been taken into account in the stock status decision. This might include published reports of stock assessments by the coastal Member or by an RFMO/A.

If the best scientific evidence available to the coastal Member is the basis for the recognition that a stock is overfished, the relevant subsidies for fishing and fishing-related activities regarding that stock are prohibited and will need to be brought into alignment with the requirements of Article 4, unless they are allowed under the flexibility in Article 4.3 (See Question 4 below). If the best scientific evidence available to that Member is not the basis for such recognition, there is no further action that needs to be taken in the context of this question.

Question 3a: Does the Member grant or maintain subsidies for fishing or fishing-related activities regarding a stock that is recognised as overfished by a relevant RFMO/A?

This question envisages the situation where your authorities provide subsidies to fishing or fishing-related activities regarding a stock that is recognised as overfished by a relevant RFMO/A in areas and for species under its competence.

To answer the question, you will need to identify the stocks concerned by the fishing and fishing-related activities that your authorities subsidise and that occur under the competence of an RFMO/A, as well as on the status of such stocks. This can be done by using Table 2.2.A (Information on subsidised fisheries) and Table 2.3 (Information on stocks fished in subsidised fisheries), or through any other means of obtaining such information. You will need to check if any of these stocks is recognised as overfished by the relevant RFMO/A.

If subsidies are provided by your authorities to fishing and fishing-related activities regarding a stock that is recognised as overfished by a relevant RFMO/A, you will need to verify if the stock status decision was based on the best scientific evidence available to the RFMO/A (See Question 3b). If that is the case, these subsidies will be prohibited and will need to be brought into alignment with the requirements of Article 4 unless they can benefit from the flexibility under Article 4.3 (see Question 4 below). If no subsidies are provided to activities occurring under the competence of an RFMO/A regarding such stocks which that RFMO/A recognises as overfished, there is no further action that needs to be taken in the context of this question.



Question 3b: Has the decision to recognise the relevant stock as overfished been taken by the relevant RFMO/A(s) based on the best scientific evidence available to it?

This question is similar to Question 2b and looks at whether a stock status decision made by an RFMO/A meets the evidence-based requirement to trigger an obligation for your authorities not to provide subsidies to fishing and fishing-related activities regarding the concerned stock.

To answer the question, you will need to check if the best scientific evidence available to the RFMO/A has been used to determine the status of any overfished stock. This should involve checking if the status of the stock has been clearly established on the basis of the latest available stock assessment reports from the RFMO/A for species and in areas under its competence.

If the best scientific evidence available to the RFMO/A has been used, the relevant subsidies for fishing and fishing-related activities regarding that stock are prohibited and will need to be brought into alignment with the requirements of Article 4 unless they are allowed under the flexibility in Article 4.3 (See Question 4 below). If the best scientific evidence available to that RFMO/A is not the basis for such recognition, there is no further action that needs to be taken in the context of this question.

Question 4: For any subsidy covered by the Article 4 prohibition, do any of the following conditions apply:

- The subsidy is implemented to rebuild the relevant overfished stock(s) to a biologically sustainable level.
- Other measures are implemented to rebuild the relevant overfished stock(s) to a biologically sustainable level?

This question relates to the flexibility included in Article 4.3, which provides that a Member may grant or maintain subsidies for fishing or fishing-related activities regarding overfished stocks “if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.” A biologically sustainable level is defined in the FSA’s footnote 11 as “the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing-related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.”

There are thus two alternative conditions under which subsidies can be exempted from the subsidy prohibition according to Article 4.3. First, a subsidy can be implemented to rebuild the overfished stock to a biologically sustainable level, in which case it is the subsidy itself which is used as a rebuilding tool. As a result, that particular subsidy is exempted from the prohibition. Second, subsidies can be provided in a context where other measures—that is, fisheries management measures—are implemented to rebuild the overfished stock to such a sustainable level. In that case, all subsidies to fishing and fishing-related activities regarding this overfished stock are exempted from the prohibition.

Article 4.3 does not require the demonstration of the effect of such subsidy or measure on the rebuilding of an overfished stock, which may take some time to materialise. However,



the more compellingly a Member will be able to demonstrate that a subsidy or measure is expected to have (or possible already has) the effect of rebuilding the relevant stock(s) to a biologically sustainable level, the more certainty the Member will have that it will meet the requirements of Article 4.3. Information that could be used to make such a demonstration includes the description of the design, objective, and/or operation of the relevant subsidy or other measure, or evidence of the impact of such subsidy or measure, including information on the abundance level of the relevant stocks and their evolution.

To check whether a subsidy meets the first condition, you will need information on the relevant fisheries subsidies, which will ideally have been collected in Table 2.1 (List of relevant fisheries subsidies). A specific column of that table is meant to indicate whether this criterion is met. To check whether the second condition is met, you will need information on whether rebuilding measures are implemented for the relevant overfished stock, which will ideally have been collected in a specific column of Table 2.3 (Information on stocks fished in subsidised fisheries). If the required information on subsidies and/or management measures was not included in these tables, it may also be collected at the time you reply to this particular question.

Subsidies for which neither of those conditions applies cannot benefit from this exemption. They are thus prohibited and will need to be brought into alignment with the requirements of Article 4, which could be done by removing them, by making sure that their beneficiaries do not continue to engage in fishing and fishing-related activities regarding the overfished stock(s), or by ensuring that these subsidies or fisheries management measures are implemented to rebuild the relevant stocks to a biologically sustainable level. Subsidies for which one of these conditions mentioned above applies are exempted from the subsidy prohibition, and there is no further action that needs to be taken in the context of this question.

Question 5: Peace Clause

5a. Has the Agreement entered into force less than 2 years ago?

5b. Is the Member a developing country Member or LDC Member?

5c. Are any of the prohibited subsidies under Article 4 granted or maintained to fishing and fishing-related activities within the Member's EEZ?

This series of questions corresponds to Article 4.4, which envisages a 2-year peace clause for subsidies granted or maintained by developing country Members, including LDC Members, to fishing or fishing-related activities within their domestic EEZ. A “peace clause” in the WTO context indicates that actions that are prohibited cannot be subject to challenge under the WTO dispute settlement mechanism during a certain period (in this case, 2 years after the entry into force of the FSA). It does not mean that an obligation does not apply. In the context of Article 4, this means that when a stock is recognised as overfished by a relevant coastal Member or RFMO/A and subsidies are not allowed under the flexibility in Article 4.3, LDC and developing country Members are still required not to provide any subsidies for fishing or fishing-related activities regarding that stock, even if such subsidies are provided for activities occurring within their domestic EEZ. However, the peace clause in Article 4.4 provides that for such subsidies, the obligation cannot be enforced through the dispute settlement mechanism for the duration of the peace clause. It, therefore, provides LDC and developing



country Members with a grace period in which to phase out these subsidies without the risk of a dispute settlement action.

Questions 5a to 5c list the necessary requirements that need to be fulfilled for the peace clause to apply. If the answer to both questions 5a and 5b is “yes,” then the peace clause provided under Article 4.4 applies to the subsidies for which the answer to Question 5c is also yes.

Regarding Question 5a, the answer will depend on when the Checklist is completed. If it is completed within 2 years of the date when the FSA entered into force (i.e., the date when two thirds of WTO Members will have deposited instruments of acceptance),⁴³ the peace clause will apply to subsidies meeting the requirement of Article 4.4 (and addressed in Question 5c). If the Checklist is completed more than 2 years from the date the FSA enters into force, the peace clause will not apply. The 2-year period is counted from the date the FSA itself enters into force and *not* from the date the Member formally accepts the FSA.

Question 5b is about the development status of a Member and reflects the fact that only developing country Members and LDCs can benefit from the peace clause. If a Member is an LDC as defined by the UN (see Annex 2 to this Guide), or a developing country Member of the WTO, the requirement under Question 5b is fulfilled. Note that, contrary to the designation of “LDC,” there is no official definition of “developing country” Member. WTO Members self-designate whether they are developed or developing.

Question 4c limits the scope of the peace clause to certain subsidies, namely those granted or maintained to fishing and fishing-related activities occurring within the domestic EEZ. To answer the question, you can refer to Table 2.2.A to identify the subsidy programmes that benefit some activities occurring in the domestic EEZ. For such subsidy programmes, the peace clause will apply to the subsidies that are provided to such activities occurring in the domestic EEZ. If all activities occur in the domestic EEZ, then the entire subsidy programme benefits from the peace clause.

In summary, if the FSA entered into force less than 2 years ago and your country is a developing country or LDC Member, then the peace clause applies to the subsidies that are provided to activities that occur within the domestic EEZ.

Ongoing Alignment: Completing Table 4.B (Overfished stocks subsidy prohibition)

General Considerations

As indicated above, the obligation under Article 4 requires WTO Members not to grant or maintain subsidies for fishing or fishing-related activities regarding a stock that is recognised as overfished by a relevant coastal Member or RFMO/As unless such subsidies or fisheries management measures are implemented to rebuild the overfished stock. Whereas Table 4.A relates to current alignment with this obligation, Table 4.B relates to the implementation steps to be taken to enable ongoing alignment with this obligation. Such implementation steps relate to the question of whether the necessary legislative, regulatory, and/or procedural mechanisms

⁴³ See the discussion under Table 3.1.A, question 4, as to the meaning of “entered into force.”



are in place and operate in a way that enables alignment with this obligation on an ongoing basis. In other words, Table 4.B addresses whether there is there a system in place that operates so that no prohibited subsidy can be provided—that is, when a stock is recognised as overfished by your authorities (in a coastal Member capacity), by another coastal Member, or by an RFMO/A, no subsidies are provided to fishing and fishing-related activities regarding that stock unless such subsidies are authorised under the flexibility in Article 4.3.

While Questions 1a and 1b address situations where your own domestic authorities recognise a stock as overfished, Questions 2a and 2b look at situations where such recognition is by other coastal Members or by RFMO/As.

Question 1a: Do domestic procedures operate so that information on the stocks that are recognised as overfished by the Member’s authorities, as well as on fisheries management measures for such stocks, is communicated in a timely way to the Member’s authorities responsible for granting or maintaining of fisheries subsidies?

This question relates to situations in which your own authorities recognise that a stock is overfished. Implementation will require that some type of procedure is in place and operates so that when such recognition by your domestic authorities occurs, this information is promptly communicated or made available to all relevant agencies responsible for providing or overseeing the provision of subsidies, together with information on management measures for such stocks. Having access to such information will allow the authorities that provide subsidies to apply the prohibition when they need to.⁴⁴

You will need to know which domestic government institution is in charge of assessing fish stocks and determining if they are overfished.⁴⁵ When a stock that is known to be fished in subsidised fisheries (as per Table 2.2.A) is assessed, this information about the status of that stock should ideally be recorded in Table 2.3 (Information on stocks fished in subsidised fisheries). Most importantly, a procedure or mechanism needs to be in place that operates in such a way that when a stock is recognised as overfished by your authorities, such information is communicated or made available to all the domestic institutions or agencies responsible for the subsidies that may benefit the fishing or fishing-related activities regarding that stock. This could take various forms. This may, for example, be done directly by the institution responsible for assessing stocks, or by a coordination committee to which such information would be communicated by this institution. The identification of the relevant agencies responsible for subsidies may be done using information in Table 2.1 (List of relevant fisheries subsidies) and Table 2.2.A (Information on subsidised fisheries). This could relate to different institutions, such as the ministry of fisheries, the ministry of finance, the ministry of trade, etc. This information-sharing mechanism could also include guidelines or procedures specifying a

⁴⁴ Note that there is nothing in the FSA that requires your authorities to undertake stock assessments and recognise stocks as overfished, which means that this question and the next one only concern situations where a stock is actually recognised as overfished.

⁴⁵ According to Article 4.2 of the FSA, the subsidy prohibition will be triggered only when stocks are recognised as overfished “based on best scientific evidence available,” but since in this particular case it will be your own authorities making the stock status decision, it is unlikely that the nature of the evidence used will be questioned by your government.



time limit by which the decision to recognise a stock as overfished must be communicated or made available to the appropriate authorities.

A procedure will also need to be in place that operates in such a way that when a stock is recognised as overfished, information on management measures regarding that stock is communicated or made available to the same agencies responsible for subsidies. Such information may also come from the agency responsible for stock assessments, but that may not necessarily always be the case. When the relevant stock is known to be fished in subsidised fisheries, this information about management measures should also ideally be recorded in Table 2.3 (Information on stocks fished in subsidised fisheries).

In the table, answer the question and describe your existing procedures providing that relevant information on stocks recognised as overfished by your competent authorities, as well as on relevant management measures, is promptly communicated to the relevant institutions responsible for subsidies. If such procedures are in place, no further action is required in the context of this question. However, if the necessary procedures are not in place, indicate the steps you would have to take to establish them. If you need any technical assistance and capacity building in setting up such information-sharing mechanisms, this should be indicated in the dedicated column in as much detail as possible. For example, this could include support for establishing a coordination committee on fisheries subsidies if one is not in place or for setting up an IT system to allow recording all stock status information and make it available to all authorities that may provide subsidies.

Question 1b: Do domestic laws, regulations, and/or administrative procedures that govern the provision of subsidies operate so that no subsidy can be granted or maintained to fishing or fishing-related activities regarding a stock that is recognised as overfished by relevant domestic authorities unless such subsidy can benefit from the flexibility under Article 4.3?

This question is about what happens once information that a stock has been recognised as overfished by your competent authorities, as well as information on management measures for the relevant stock, has been communicated or made available to the agencies responsible for providing subsidies. The domestic laws, regulations and/or administrative procedures that govern the provision of subsidies will then need to operate in such a way that no subsidy can be provided to fishing and fishing-related activities regarding that stock unless such subsidies are allowed under the flexibility in Article 4.3. This means that a system linking information on stock status and management measures to the decisions related to the provision of subsidies needs to exist. This system may be more or less codified: while it may involve legal provisions, it may also rely on purely administrative procedures.

Importantly, some subsidies may continue to be allowed under the flexibility in Article 4.3. If your authorities provide, or intend to provide, subsidies regarding overfished stocks, a mechanism will need to be in place for verifying whether such subsidies are allowed under this flexibility. For subsidies to be allowed, one of the following conditions must be fulfilled: (1)



such subsidies are implemented to rebuild the relevant overfished stock(s)⁴⁶ to a biologically sustainable level, in which case these particular subsidies are exempted from the prohibition, or (2) other measures (such as fisheries management measures) are implemented to rebuild the relevant overfished stock(s) to a biologically sustainable level, in which case all subsidies provided to fishing and fishing-related activities regarding the relevant overfished stock(s) are exempted from the prohibition.

Relevant information to make that verification includes information about the design, objective, and operation of the relevant subsidies or management measures, as well as information on the abundance level of the relevant stocks and its evolution. While information on the subsidies themselves will be directly available to the relevant authority responsible for a given subsidy (and should ideally be recorded in a dedicated column in Table 2.1), information on fisheries management measures (ideally recorded in a dedicated column in Table 2.3) and abundance level of the stocks would need to come from fisheries management authorities. Article 4.3 does not explicitly require the demonstration of the effect of such subsidies or measures (i.e., that the stock is effectively rebuilding as a result), which may take some time to materialise. However, the more compellingly a Member will be able to demonstrate that a subsidy or measure is expected to have, or possibly already has, the effect of rebuilding the relevant stock(s) to a biologically sustainable level, the more certainty that Member will have regarding its ability to meet the requirements of Article 4.3.

For the subsidies that do not meet the requirements to be allowed under Article 4.3, the laws, regulations, and procedures that govern the provision of subsidies will need to operate so that two functions are performed: (1) bringing *existing* subsidies for fishing and fishing-related activities regarding a stock that is recognised as overfished into alignment with the requirements of Article 4, and (2) preventing *new* subsidies that are not aligned with such requirements from being provided. Regarding the first function, when a stock is recognised as overfished, it will be necessary to check whether any fishing or fishing-related activity regarding that stock actually benefits from subsidies provided by your domestic authorities and identify which ones. This can be done by using Table 2.2.A (Information on subsidised fisheries) or through any other means of obtaining such information. When subsidies are indeed provided to such fishing and fishing-related activities, they must be immediately brought into alignment with the requirements of Article 4. This could be done by suspending or terminating these subsidies, by requiring that their beneficiaries do not continue to engage in fishing and fishing-related activities regarding the overfished stock(s), or by reforming subsidy programmes or fisheries management measures (possibly by introducing new such measures) so that the subsidies will be allowed under the flexibility in Article 4.3. The second function this system must fulfil is to prevent any new subsidy to be provided to such fishing and fishing-related activities. In practice, this means that the subsidy-providing institutions must verify, before granting any subsidy, that the beneficiaries are not, or will not continue to be, engaged in fishing and fishing-related activities regarding the overfished stock(s), unless the subsidies are allowed under Article 4.3.

⁴⁶ “Rebuilding” a stock means increasing the abundance of the stock to the level considered to be biologically sustainable by the coastal Member or RFMO/A. This level can be MSY-based or based on other reference points, as indicated in footnote 11 to the FSA.



This system linking information on stock status and management measures to the provision of subsidies should apply to all the subsidy programmes that fall within the scope of the Agreement (as identified in Table 2.1) and may thus involve various agencies. For all the different subsidies, you will need to check that the laws, regulations, and/or administrative procedures governing their provision allow the actions that must be taken in order to be in compliance with Article 4—that is, suspending, terminating, or not granting a subsidy, requiring that beneficiaries do not engage in fishing and fishing-related activities regarding overfished stocks, or reforming subsidies or fisheries management measures so that subsidies can be allowed under Article 4.3. Equally important, such laws, regulations, and/or procedures must operate so that the provision of each subsidy is actually conditioned on the absence of engagement in fishing or fishing-related activities regarding overfished stocks, unless the relevant subsidy is allowed under Article 4.3. If this is not the case, you may have to amend your legislation or procedures to ensure such a link is systematically made for each of the subsidies. Such legislation and procedures should define how the process would work, but the way your government does that is entirely at its discretion, as long as the end result is that no prohibited subsidies are provided.

In the table, describe your existing laws, regulations and/or administrative procedures in this regard and indicate if they meet the requirements or whether there are any gaps. If there are no gaps, no further action is needed in the context of this question. However, if your current laws, regulations, and/or administrative procedures do not operate so that no subsidy can be provided regarding overfished stocks (subject to the flexibility in Article 4.3), indicate the actions that would be necessary to address this gap. If this requires new laws, regulations, and/or administrative procedures, or any amendment thereof, indicate which authority would be responsible for this and how long this would take. While introducing or changing a law might require parliamentary approval and/or head of state approval, which could take several months or more, the process may be simpler if you only need to develop or amend regulations (subordinate legislation), and even more so if you only need to draw up or amend administrative procedures. As regards any amendments that are required, indicate whether you have the capacity to make the relevant amendments or whether you would need technical assistance and capacity building in this regard. If you require assistance, indicate in as much detail as possible what assistance you would require.

Question 2a: Do domestic procedures operate so that information on the stocks that are recognised as overfished by RFMO/As or other coastal Members based on the best scientific evidence available to them, as well as on fisheries management measures for such stocks, is collected and communicated in a timely way to the Member's authorities responsible for granting or maintaining fisheries subsidies?

This question is similar to Question 1a, but it relates to situations where it is an RFMO/A or another coastal Member that recognises a stock as overfished. Implementation will require that some type of procedure is in place that operates so that when such a stock status decision is made by these actors regarding stocks that are fished by fleets that receive subsidies from your authorities, this is promptly communicated or made available to domestic authorities responsible for providing fisheries subsidies, together with information on management measures for such stocks. Having access to such information will allow the authorities that provide subsidies to apply the prohibition when they need to.



A first important step is to have a procedure in place that operates so that information on the status of the stocks fished by the fleets that are subsidised (or may be subsidised) by your authorities (ideally identified in Table 2.2.A), and that are operating in another coastal Member's EEZ or in fisheries under the competence of an RFMO/A, is regularly collected and recorded. This should ideally be done by maintaining information in Table 2.3 up to date with respect to the various stocks fished by subsidised fleets and their corresponding stock status. A procedure may also be established for your authorities to verify (to the extent possible) whether such stock status decisions are based on the "best scientific evidence available" to the coastal Member or RFMO/A (as per Article 4.2). If that is not the case, the recognition that a stock is overfished will not affect the subsidies in question.

Most importantly, a procedure or mechanism is needed such that information on the stocks that are recognised as overfished is promptly communicated or made available to all the government institutions or agencies responsible for subsidies that may benefit fishing and fishing-related activities regarding such stocks. This could take various forms. This may, for example, be done by requiring the institution responsible for maintaining and updating the list of stock status (Table 2.3) to communicate to all relevant subsidy-granting authorities any assessment that a stock is overfished, or by requiring that the information be conveyed to a coordination committee that would have responsibility for further dissemination of this information. The identification of the relevant agencies responsible for subsidies may be made using information in Table 2.1 (List of relevant fisheries subsidies) and Table 2.2.A (Information on subsidised fisheries). This could relate to different institutions, such as the ministry of fisheries, the ministry of finance, the ministry of trade, etc. This information-sharing mechanism could also include guidelines or procedures specifying a time limit by which the recognition that stock as overfished must be communicated or made available to the appropriate authorities.

A procedure will also need to be in place that operates in such a way that when a stock is recognised as overfished, information on management measures regarding that stock is communicated or made available to the same agencies responsible for subsidies. Such information will likely need to be collected and shared by the agency (or one of the agencies) responsible for fisheries management. When the relevant stock is known to be fished in subsidised fisheries, this information about management measures should also ideally be recorded in Table 2.3 (Information on stocks fished in subsidised fisheries).

In the table, answer the question and describe your existing procedures providing that relevant information on stocks recognised as overfished by other coastal Members or RFMO/As is promptly communicated or made available to the relevant institutions responsible for subsidies. If adequate procedures already exist, no further action is required in the context of this question. However, if such procedures are not in place, indicate the steps you would have to take to establish them. If you need any technical assistance and capacity building in setting up the relevant information-sharing procedures and mechanisms, provide this information in the dedicated column in as much detail as possible. For example, this could include support for establishing a coordination committee on fisheries subsidies if one is not in place, or for setting up an IT system allowing prompt recording of all stock status information in one electronic place and make it accessible to all authorities that may provide subsidies.



Question 2b: Do the domestic laws, regulations, and/or administrative procedures that govern the provision of subsidies operate so that no subsidy can be granted or maintained to fishing or fishing-related activities regarding a stock that is recognised as overfished by an RFMO/A or another coastal Member based on the best scientific evidence available to it unless such subsidy can benefit from the flexibility under Article 4.3?

This question is very similar to Question 1b, but relates to what happens once information that a stock is recognised as overfished by an RFMO/A or another coastal Member, as well as information on relevant fisheries management measures for such stocks, has been communicated to the agencies responsible for providing subsidies. Here again, the laws, regulations, and/or administrative procedures that govern the provision of subsidies will need to operate so that no subsidy can be provided to fishing or fishing-related activities regarding overfished stocks unless such subsidies are allowed under the flexibility in Article 4.3. This will require some kind of system to link information on stock status and fisheries management measures to the provision of fisheries subsidies, which could take various forms (i.e., legislative, regulatory, or administrative).

Some subsidies may continue to be allowed under the flexibility in Article 4.3. If your authorities provide, or intend to provide, subsidies regarding overfished stocks, your system will need to include a mechanism to verify that these subsidies are allowed under that flexibility. For each of these subsidies, verification will be needed that either (1) such subsidies themselves, or (2) other measures—that is, fisheries management measures—are implemented to rebuild the relevant overfished stock(s) to a biologically sustainable level. If it is the subsidies themselves that are implemented to rebuild the overfished stock(s), only these particular subsidies are exempted from the subsidy prohibition. If there are fisheries management measures implemented to achieve that objective, all subsidies provided to fishing and fishing-related activities regarding the relevant overfished stock(s) are exempted.

Relevant information to make that verification includes information about the design, objective, and operation of the relevant subsidies or fisheries management measures, as well as information on the abundance level of the relevant stocks and its evolution. While information on the subsidies themselves will be directly available to the relevant authority responsible for a given subsidy (and should ideally be recorded in a dedicated column in Table 2.1), information on fisheries management measures (ideally recorded in a dedicated column in Table 2.3) and abundance level of the stocks would need to come from the coastal Member or RFMO/A responsible for managing a given fishery. Article 4.3 does not explicitly require the demonstration of the effect of such subsidies or measures (i.e., that the stock is effectively rebuilding as a result), which may take some time to materialise. However, the more compellingly a Member will be able to demonstrate that a subsidy or measure is expected to have, or possibly already has, the effect of rebuilding the relevant stock(s) to a biologically sustainable level, the more certainty that Member will have regarding its ability to meet the requirements of Article 4.3

If the requirements for subsidies to be allowed under Article 4.3 are not met, the laws, regulations, and/or procedures that govern the provision of subsidies will need to operate so that *existing* subsidies for fishing and fishing-related activities regarding stocks that are



recognised as overfished are brought into alignment with the requirements of Article 4. When a stock is recognised as overfished, it will be necessary to verify if any fishing or fishing-related activities regarding that stock currently benefit from subsidies provided by your domestic authorities and identify which ones. This can be done by using Table 2.2.A (Information on subsidised fisheries) or through any other means of obtaining such information. When such activities are indeed benefiting from subsidies, such subsidies must be promptly brought into alignment with the requirements of Article 4. This could be done by suspending or terminating these subsidies, by requiring that their beneficiaries do not continue to engage in fishing and fishing-related activities regarding the overfished stock(s), or by reforming subsidy programmes or fisheries management measures (possibly by introducing new such measures) so that the subsidies will be allowed under the flexibility in Article 4.3. The system will also need to prevent any *new* prohibited subsidy from being provided. In practice, this means that subsidy-providing institutions must verify before granting any subsidy that beneficiaries are not (or will not continue to be) engaged in fishing and fishing-related activities regarding the overfished stock(s) unless the subsidies are allowed under Article 4.3.

Here again, it is important to note that the system to link information on stock status to subsidy provision must apply to all the relevant subsidy schemes (as identified in Table 2.1) and may thus involve various agencies. For each subsidy, you will need to check that the laws, regulations, and/or administrative procedures governing its provision not only allow but also require that the necessary action will be taken when a stock is recognised as overfished—that is, suspending, terminating, or not granting a subsidy, requiring that beneficiaries do not engage in fishing and fishing-related activities regarding overfished stocks, or reforming subsidies or fisheries management measures so that subsidies can be allowed under Article 4.3. You may have to amend your legislation or procedures so that this link is systematically made for each of the subsidies. Such legislation and procedures should define how the process would work, but nothing in the FSA prescribes any particular way of doing so, as long as the end result is that no prohibited subsidies are provided.

In the table, describe your existing laws, regulations, and/or administrative procedures in this regard, and indicate if all the requirements are met, or whether there are any gaps. If there are no gaps, no further action is needed in the context of this question. However, if your current laws, regulations, and/or administrative procedures do not operate so that no prohibited subsidies can be provided, indicate what actions would be necessary to address the situation. If this requires new laws, regulations, and/or administrative procedures, or any amendment thereof, indicate who would be responsible for putting in place the changes or amendments and how long this would take. While introducing or changing a law will likely require parliamentary approval and/or head of state approval, which could take several months or even longer, the process may be simpler if you only need to amend regulations (subordinate legislation), and even more so if the changes only need to be made at the level of administrative procedures. As regards any amendments that are required, indicate whether you have the capacity to make the relevant amendments, or whether you would need technical assistance. If you require technical assistance and capacity building, indicate in as much detail as possible what assistance you require.

5.0 Other Subsidies





5.1 Introduction

Article 5 includes three separate obligations. These obligations are:

- 1. Unregulated high seas subsidy prohibition**
An obligation on Members not to grant or maintain subsidies to fishing or fishing-related activities on the high seas outside the competence of a relevant RFMO/A (see Article 5.1).
- 2. Special care and due restraint obligation regarding reflagged vessels**
An obligation on Members to take special care and exercise due restraint when granting subsidies to vessels not flying the subsidising Member's flag (see Article 5.2).
- 3. Special care and due restraint obligation regarding unassessed stocks**
An obligation on Members to take special care and exercise due restraint when granting subsidies to fishing or fishing-related activities regarding stocks the status of which is unknown (see Article 5.3).

These three obligations are addressed in the following subsections (in Sections 5.1, 5.2, and 5.3, respectively).

Article 11.1 of the FSA provides for an exception to these three obligations, which allows Members to provide subsidies for disaster relief even when they would otherwise be disciplined or prohibited. This exemption is also addressed in the following subsections.

5.2 Unregulated High Seas Subsidy Prohibition (Articles 5.1 and 11.1)

Summary box

Obligation: No Member shall provide subsidies to fishing and fishing-related activities that occur on the high seas, unless such activities fall within the competence of a relevant RFMO/A.

Exemption: Subsidies are not prohibited if they are for disaster relief.

Note: There are no particular S&D provisions related to this obligation.



Relevant Legal Text

ARTICLE 5: OTHER SUBSIDIES

5.1 No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

ARTICLE 11: FINAL PROVISIONS

[...]

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster¹⁹ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the fishery, and/or the affected fleet up to its pre-disaster level.

¹⁹ For greater certainty, this provision does not apply to economic or financial crises.

Current Alignment: Completing Table 5.1.A (Unregulated high seas subsidy prohibition)

General Considerations

Article 5.1 is the first obligation in Article 5 and relates specifically to some of the subsidies that can be provided by a Member to fishing and fishing-related activities that occur outside of the waters under its jurisdiction. More specifically, it provides that Members shall not grant or maintain subsidies to fishing or fishing-related activities that occur both outside of the jurisdiction of a coastal Member or coastal non-Member and outside the competence of a relevant RFMO/A. In other words, Article 5.1 prohibits the provision of subsidies to fleets that operate on the high seas unless such fishing and fishing-related activities fall within the competence of a relevant RFMO/A. As such, it targets subsidies to fishing and fishing-related activities in situations where no fisheries management regime exists.

While Question 1 addresses the question of whether any of the subsidies targeted by the prohibition in Article 5.1 is being provided, Question 2 is about whether any such subsidies are for disaster relief, in which case they are exempted from the prohibition.

Note that while the remainder of this section does not provide specific guidance on how to fill the “Relevant information” column of Table 5.1.A, this column should be used to indicate any useful information that supports your answer in the “Yes/No” column and that you would like to keep a record of.



Question 1: Does the Member provide subsidies to fishing or fishing-related activities outside of the jurisdiction of a coastal Member or coastal non-Member and outside the competence of a relevant RFMO/A?

To answer this question, you will need to determine whether some of the subsidies covered by the FSA that are provided by your authorities, and which should ideally have been identified in Table 2.1 (List of relevant fisheries subsidies), are provided to fishing and fishing-related activities that occur both (1) on the high seas and (2) outside the competence of any relevant RFMO/A. This can be done by using Table 2.2.A—where such information should ideally have been collected in a dedicated column—or through any other means of obtaining such information. Information will be needed both on the geographic location of subsidised activities and on whether they fall within the scope of the mandate of a relevant RFMO/A, which will require information on the nature of the activities and the species involved, for example.

If your authorities provide subsidies that meet these two criteria, these subsidies must be reformed or removed to be brought into alignment with the requirements of Article 5.1 unless they are for disaster relief (see Question 2). If your authorities do not provide any subsidy that meets these criteria and is thus prohibited under Article 5.1, there is no further action that needs to be taken in the context of this question, and you can also skip Question 2.

Question 2: Disaster relief exemption

- 2a. Does the Member provide any subsidy related and limited to relief of a specific disaster?
- 2b. Is the subsidy limited to the geographic area affected by the disaster?
- 2c. Is the subsidy provided for a specific time period?
- 2d. In the case of reconstruction subsidies, are they limited to restoring the affected fishery, and/or the affected fleet, to its pre-disaster level?

Questions 2a–2d are about the exemption in Article 11.1, which is accessible to all Members. It allows Members to provide subsidies for disaster relief, even when such subsidies would otherwise be disciplined under Article 5, including the subsidy prohibition in Article 5.1.

For a subsidy to be allowed under this exemption, you need to answer “yes” to *all* four questions because they apply cumulatively. As a result, if you answer “no” to any of these questions, the disaster exemption does not apply to the relevant subsidy. Footnote 19 of the FSA specifies that this exemption does not apply to economic disasters and financial crises, but no further guidance is provided on what constitutes a disaster for purposes of Article 11.1. Based on the ordinary meaning of the term “disaster,” this would clearly include natural disasters such as cyclone, hurricanes or typhoons, earthquakes, tsunamis, and volcanic eruptions, but could also include some human-made disasters, such as oil spills, other pollution events, or nuclear disasters.⁴⁷

To answer the question, check whether any subsidy your authorities provide fulfils all four conditions, which should ideally have been indicated in Table 2.1 in a dedicated column. If

⁴⁷ The FSA does not specify “natural disasters” in the text; instead, it uses the broader term “disaster.”



any subsidies meet all of these criteria, they are exempt from subsidy prohibition in Article 5.1, and there is no further action that needs to be taken in the context of this question. Subsidies that are covered by this subsidy prohibition and that do not meet all of these criteria will need to be brought into alignment with the requirements of Article 5.1 by reforming or removing them. Reform may consist of restricting access to these subsidies to activities that occur under the jurisdiction of a coastal Member or coastal non-Member or the competence of an RFMO/A.

Ongoing Alignment: Completing Table 5.1.B (Unregulated high seas subsidy prohibition)

General Considerations

As indicated above, the obligation under Article 5.1 requires Members not to grant or maintain subsidies to fishing or fishing-related activities that occur both outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A. While Table 5.1.A relates to your government's current alignment with this obligation, Table 5.1.B relates to the implementation steps to be taken to enable ongoing alignment with that obligation. Such implementation steps relate to the question of whether the necessary laws, regulations, and/or administrative procedures are in place and operate in a way that enables alignment with this obligation on an ongoing basis. In other words, Table 5.1.B addresses whether there is a system in place that operates so that no prohibited subsidy can be provided—that is, if there are fishing or fishing-related activities that take place on the high seas and are not under the management mandate of any relevant RFMO/A, subsidies are not provided to such activities.

Question 1: Do the domestic laws, regulations, and/or administrative procedures that govern the provision of subsidies operate so that no subsidy can be granted or maintained to fishing or fishing-related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A?

The aim of this question is to determine whether the right mechanisms are in place to prevent the provision of subsidies that are prohibited under Article 5.1. The laws, regulations, and/or administrative procedures that govern the provision of subsidies need to operate so that no subsidy can be provided to fishing or fishing-related activities that occur in areas that are not under the jurisdiction of a coastal Member or coastal non-Member and do not fall under the competence of a relevant RFMO/A, unless such subsidies are for disaster relief. The system in place to enable ongoing alignment with this obligation may be more or less codified: it may involve legal provisions but may also rely on purely administrative procedures.

Once the FSA has entered into force, an initial verification will be needed for fisheries subsidies that are in place at that time and that fall within the Agreement's scope, determining whether any of them are prohibited under Article 5.1. Subsidy programmes that are identified as prohibited—because they are fully or partly provided to activities occurring on the high seas that are not under the competence of a relevant RFMO/A—will need to be reformed or removed. This initial verification and follow-up actions are already covered under Table 5.1.A above.



Once an initial verification has been undertaken and subsidies are aligned with the requirements of Article 5.1, the system of laws, regulations, and procedures that govern the provision of subsidies will need to operate so that it prevents the provision of prohibited subsidies on an ongoing basis. In practice, the system will need to perform two functions: (1) verify whether existing beneficiaries of existing subsidy programmes start engaging in activities on the high seas that are not under the competence of a relevant RFMO/A, and, in case this happens, suspend or end the provision of subsidies to such beneficiaries, (2) verify that possible new beneficiaries of either new or existing subsidy programmes do not engage in such activities, and if they do, prevent them from receiving such subsidies. For each subsidy programme, you will need to check that the laws, regulations, and/or administrative procedures governing the provision of subsidies effectively restrict access to subsidies to beneficiaries that respect these conditions. Doing so may require you to amend your legislation or procedures to provide for a systematic linkage between receipt of subsidies and compliance with the conditions imposed on the provision of the subsidies. Such legislation and procedures should define how the process would work. There is considerable flexibility for Members in designing their legislation, regulations, and/or procedures in that regard, as nothing in the FSA prescribes any particular approach, so long as long as the end result is that no prohibited subsidies are provided.

In Table 5.1.B, describe your existing laws, regulations, and/or administrative procedures in this regard and indicate if all the requirements are met or whether there are any gaps. If there are no gaps, no further action is required in the context of this question. However, if your current laws, regulations, and/or administrative procedures do not operate in such a way that no prohibited subsidies can be provided, indicate what actions would be necessary to address the situation. If this requires new laws, regulations, and/or administrative procedures, or any amendment thereof, indicate which authority would be responsible for carrying this out and how long this would take. While introducing or changing a law will likely require parliamentary and/or head of state approval, which could take several months or more, the process may be simpler if you only need to amend regulations (subordinate legislation), and even more so if the changes only need to be made at the level of administrative procedures. As regards any amendments that are required, indicate whether you have the capacity to make the relevant amendments, or whether you would need technical assistance and capacity building. If you require assistance, indicate in as much detail as possible what assistance you require.



5.3 Special Care and Due Restraint Obligation Regarding Reflagged Vessels (Articles 5.2 and 11.1)

Summary box

Obligation: A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

Exemption: Subsidies are not affected by this obligation if they are for disaster relief.

Note: There are no particular S&D provisions related to this obligation.

Relevant Legal Text

ARTICLE 5: OTHER SUBSIDIES

[...]

5.2 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

ARTICLE 11: FINAL PROVISIONS

[...]

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster¹⁹ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the fishery, and/ or the affected fleet up to its pre-disaster level.

¹⁹ For greater certainty, this provision does not apply to economic or financial crises.

Ongoing Alignment: Completing Table 5.2 (Special care and due restraint obligation regarding reflagged vessels)

General Considerations

Article 5.2 is the second obligation in Article 5 and addresses subsidies that may be granted by Members to vessels that do not fly their flag. It establishes an obligation for subsidizing Members to take special care and exercise due restraint when granting such subsidies. In essence, this rule thus requires any subsidizing Member to be particularly cautious when providing subsidies to vessels that do not fly that Member's flag because in such cases the subsidizing Member may not have any sort of jurisdiction or control over the activities undertaken by these vessels (including on fisheries-related matters). Importantly, subsidies



for disaster relief are exempted from this obligation, as per Article 11.1 of the FSA. This exemption is explained in more detail in the “Completing Table 2.1” subsection of Section 2, as well as in the explanations related to Question 2 of Table 5.1.A above.

Article 5.2 does not address the subsidies that were granted before the FSA’s entry into force and is only creating an obligation related to the process of granting new subsidies. For this obligation, the “Current alignment” table used in the Checklist for most other obligations is thus unnecessary, and only an “Ongoing alignment” table needs to be filled out. Table 5.2 relates to the implementation steps to be taken to enable ongoing alignment with that obligation. In other words, it addresses the question of whether the system of laws, regulations, and/or administrative procedures that govern the provision of fisheries subsidies operates so that special care is taken and due restraint is exercised when subsidies are granted to vessels that do not fly the subsidising Member’s flag.

Question 1: If the Member grants subsidies to vessels not flying its flag, do the domestic laws, regulations, and/or administrative procedures that govern the provision of subsidies operate so that special care is taken and due restraint is exercised when doing so?

This question is about how the domestic laws, regulations, and/or administrative procedures that govern the provision of fisheries subsidies operate in cases where subsidies are granted to vessels that do not fly your flag. If such a situation never arises for any of the subsidies provided by your authorities, you can simply skip this question. If, however, your authorities provide, or intend to provide, subsidies to vessels that do not fly your flag, a system will need to be in place that operates so that special care is taken and due restraint is exercised when doing so, unless such subsidies are for disaster relief.

There is no guidance in Article 5.2 about specific actions that would constitute taking special care or the exercise of due restraint. Each Member can thus adopt the approach it deems most suitable when providing such subsidies. As a general principle, however, the laws, regulations, and/or procedures that govern the provision of subsidies must operate so that they demonstrably involve particular caution in granting subsidies in this type of situations. One possible approach, for example, would be to apply more stringent conditions in determining whether the subsidy should be granted to a particular vessel. This could, for example, include requiring more detailed information and reporting on the fishing or fishing-related activities undertaken by that vessel and whether such activities are exclusively undertaken in the context of effective and sustainable management of relevant stocks.

Table 2.2 (Information on subsidised fisheries), which should ideally include a list of subsidised vessels under various subsidy schemes, may provide you with some initial information that will be useful to answer that question. While Table 2.2 does not specifically include information on the flag under which subsidised vessels, such a list of subsidised vessels can already help inform a process of verification of which vessels do not fly your flag and which conditions and processes apply when subsidies are granted to such vessels.

In the table, describe your existing laws, regulations and/or administrative procedures in this regard and indicate if they meet the requirements or whether there are any gaps. If the requirements are fulfilled, no further action is required in the context of this question.



However, if your current laws, regulations, and/or administrative procedures do not operate so that special care is taken and due restraint is exercised when granting subsidies to vessels that do not fly your flag, indicate the actions that would be necessary to address this gap. If your authorities do not have the required capacity or resources to implement the required actions, indicate in as much detail as possible the related technical assistance and capacity-building needs.

5.4 Special Care and Due Restraint Obligation Regarding Unassessed Stocks (Articles 5.3 and 11.1)

Summary box

Obligation: A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing-related activities regarding stocks the status of which is unknown.

Exemption: Subsidies are not affected by this obligation if they are for disaster relief.

Note: There are no particular S&D provisions related to this obligation.

Relevant Legal Text

ARTICLE 5: OTHER SUBSIDIES

[...]

5.3 A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.

ARTICLE 11: FINAL PROVISIONS

[...]

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster¹⁹ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the fishery, and/or the affected fleet up to its pre-disaster level.

¹⁹ For greater certainty, this provision does not apply to economic or financial crises.



Ongoing Alignment: Completing Table 5.3 (Special care and due restraint obligation regarding unassessed stocks)

General Considerations

The third obligation included in Article 5 is found in Article 5.3, which requires Members to take special care and exercise due restraint when providing subsidies to fishing and fishing-related activities regarding stocks, the status of which is unknown. It addresses situations where no information is available on whether the stocks is healthy or already overexploited, making it impossible to know how much of that stock can be fished in a sustainable way. This rule thus requires Members to show particular caution when providing subsidies in these circumstances, as the unassessed stock could already be in an overfished condition and be particularly vulnerable. However, as already indicated under Section 4, the FSA contains no obligation to assess stocks.

Importantly, subsidies for disaster relief are exempted from this obligation, as per Article 11.1 of the FSA. This exemption is explained in more detail in the “Completing Table 2.1” subsection of Section 2, as well as in the explanations related to Question 2 of Table 5.1.A above.

As in the case of Article 5.2 (addressed above), Article 5.3 does not address the subsidies that were granted before the FSA’s entry into force and is only creating an obligation related to the process of granting new subsidies. For this obligation, the “Current alignment” table used in the Checklist for most other obligations is thus unnecessary, and only an “Ongoing alignment” table needs to be filled out. Table 5.3 relates to the implementation steps to be taken to enable ongoing alignment with that obligation. In other words, it addresses the question of whether the system of laws, regulations, and/or administrative procedures that govern the provision of fisheries subsidies operates so that special care is taken and due restraint is exercised when subsidies are granted to fishing or fishing-related activities regarding stocks the status of which is unknown.

Question 1: If the Member grants subsidies regarding stocks the status of which is unknown, do the domestic laws, regulations, and/or administrative procedures that govern the provision of subsidies operate so that special care is taken and due restraint is exercised when doing so?

This question is about how the domestic laws, regulations, and/or administrative procedures that govern the provision of fisheries subsidies operate in cases where subsidies are granted to fishing or fishing-related activities regarding stocks the status of which is unknown. As explained above, the system in place will need to operate so that special care is taken and due restraint is exercised when doing so, unless such subsidies are for disaster relief.

Like Article 5.2, Article 5.3 provides no guidance about specific actions that would constitute taking special care or the exercise of due restraint, thus leaving much to the discretion of each Member in adopting approaches it deems most suitable regarding such stocks. As a general principle, however, the laws, regulations, and/or procedures that govern the provision of subsidies must operate so that they demonstrably involve particular caution in granting subsidies to activities regarding unassessed stocks. “Special care” may include monitoring the catch from that stock over time to determine trends in catch per unit effort. It could



also include implementing management measures and harvest control rules that define management responses to changing catch per unit effort. Exercising “due restraint” could include attaching special conditions to subsidies granted to fishing or fishing-related activities regarding that stock.

Table 2.3 (Information on stocks fished in subsidised fisheries) may provide you with important initial information that will be useful for answering this question. For each stock fished in subsidised fisheries, this Table 2.3 should ideally provide information on stock status, including by indicating when such status is “unknown.” Comparing this information with information in Table 2.2.A and Table 2.1 will help you to identify the subsidies that may already benefit fishing and fishing-related activities regarding unassessed stocks, allowing you to then check with relevant authorities which conditions and processes apply when such subsidies are granted regarding those stocks and whether special care and due restraint are applied.

In the table, describe your existing laws, regulations and/or administrative procedures in this regard and indicate if they meet the requirements or whether there are any gaps. If the requirements are fulfilled, no further action is required in the context of this question. However, if your current laws, regulations and/or administrative procedures do not operate so that special care is taken and due restraint is exercised when granting subsidies to fishing or fishing-related activities regarding stocks the status of which is unknown, indicate the actions that would be necessary to address this gap. If your authorities do not have the required capacity or resources to implement the required actions, indicate in as much detail as possible the related technical assistance and capacity building needs.

6.0

Specific Provisions for LDC Members





Summary box

Obligation: A Member shall exercise due restraint in raising matters involving LDC Members and shall take LDC Members' specific situation into consideration when exploring solutions.

Note: Given the general nature of this obligation, the Checklist does not include dedicated tables.

Relevant Legal Text

ARTICLE 6: SPECIFIC PROVISIONS FOR LDC MEMBERS

A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any.

In addition to the peace clauses of Articles 3.8 and 4.3 described in corresponding sections above, which are available to all developing country Members, the FSA includes a specific article including provisions for LDC Members. It contains a double obligation, the first part of which is an obligation to exercise “due restraint.” In practical terms, this means that although a specific provision may apply to an LDC, other Members should exercise restraint in a situation where they would believe that an LDC Member is failing to fully meet its obligations under the FSA. The second part of the obligation explicitly requires Members to take into consideration the specific situation of the LDC Member in question when exploring possible solutions. While FSA does not explicitly point out how such consideration should be taken, existing WTO practices would point out toward a stronger reliance on consultations, whether bilateral or those taking place within the context of more formal WTO procedures, that would allow both parties to the discussion to better understand the issues at play and the specific situation of LDC Member, thus providing useful context when determining a range of solutions.⁴⁸

In practice, such a “due restraint” principle has generally been observed by WTO Members under other WTO agreements. At the time of writing, no other Member had ever challenged any measure taken by LDC Members in the over 600 dispute settlement cases that have reached the WTO since its creation.⁴⁹

⁴⁸ This provision has important similarities with a provision found in Article 15 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Anti-Dumping Agreement).

⁴⁹ There were 610 cases in the WTO dispute settlement list of cases https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm checked on February 21, 2022.

7.0

Technical Assistance and Capacity Building





Summary box

Obligation: Technical assistance and capacity-building support shall be provided to developing country and LDC Members to implement the Agreement.

Additional provision: A WTO funding mechanism, to be funded by Members on a voluntary basis, shall be established in support of this assistance.

Note: Given the general nature of this obligation, the Checklist does not include dedicated tables.

Relevant Legal Text

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

Bearing in mind that not all WTO Members have the technical skills, resources, and capacity needed to effectively implement their obligations under the FSA, the FSA is addressing the provision of technical assistance and capacity building to developing country Members in Article 7.

Technical assistance and capacity building are two sides of the same coin. Technical assistance relates to the provision of assistance with certain functions, roles, or procedures to enable implementation of the disciplines under the FSA. Capacity building, on the other hand, relates to the process of developing skills and knowledge and their (subsequent) use in the recipient Member so that it can undertake those functions by itself in future. Capacity building would typically involve a significant element of training, including of train the trainers, to ensure that skills transfer takes place.

The first sentence of Article 7 deals with the requirement (“shall”) of targeted technical assistance and capacity-building support to be provided to developing country Members, including LDC members, for the purpose of implementation of FSA disciplines. Such wording provides the assurance to developing country Members that the necessary “targeted” assistance will be made available when aiming to implement the FSA. The legal text of Article 7 makes it clear that a developing country Member or an LDC Member in need of such support shall be entitled to receive it.

The type of technical assistance and capacity building to be provided will depend on the individual needs of the beneficiary Member. However, donors often find it easier to provide



technical assistance and capacity-building support when the Member's needs are clearly identified. This makes it twice as important to carefully complete any tables in the Checklist that refer to "Technical assistance and capacity building needs" (typically the "ongoing alignment" tables, or "B" tables), as such information may later be used to better formulate possible needs.

The second sentence of Article 7 addresses the establishment of a voluntary WTO funding mechanism to support the technical assistance and capacity building activities. Article 7 also specifically indicates the voluntary nature of such a funding mechanism, making it clear that no Member can be obliged to contribute.

As regards technical assistance and capacity-building by the WTO Secretariat,

The vast bulk of WTO "technical assistance" spending is dedicated towards helping officials better understand complex WTO rules and disciplines so that they can implement WTO agreements in ways which will bolster their trading regimes and negotiate more effectively with their trading partners.⁵⁰

This suggests that the WTO will assist developing country Members' officials to better understand the rules and obligations of the FSA. It may not, however, be in a position to support Members in designing any necessary reform, including through the drafting or amendment of legislation, regulations, and/or procedures, although the WTO Secretariat is generally available to assist in commenting on Members' draft legislation. The WTO often provides regional training events, which reach a wider audience than assistance to a single Member.

Article 7 points out that the voluntary mechanism shall be established "in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development." The use of the wording "such as" indicates that cooperation will not be limited to those two international organisations and possible partnerships in this area will likely include other actors, including the World Bank Group.⁵¹

There is a broad range of actors providing technical assistance and capacity-building support, including both international and/or regional organisations, as well as other WTO Members. It is important to note that while the WTO provides a significant amount of trade-related technical assistance, it is not among the 10 major donors of aid for trade (Organisation for Economic Co-operation and Development [OECD], 2019).⁵² Substantial amounts of technical assistance and capacity-building support come from other WTO Members, as well as from other international or regional organisations, such as the World Bank Group or

⁵⁰ WTO. (n.d.). *Building trade capacity*. https://www.wto.org/english/tratop_e/devel_e/build_tr_capa_e.htm

⁵¹ An early preparation for the launch of such voluntary funding mechanism started before the conclusion of the FSA and the WTO press release pointed out that the expertise of the World Bank Group, the FAO, and International Fund for Agricultural Development would be leveraged in the Fund's operations: See WTO. (2022). *WTO fisheries funding mechanism readied to provide support for ending harmful subsidies*. https://www.wto.org/english/news_e/news22_e/fish_14jun22_e.htm

⁵² See OECD. (n.d.). *Aid for trade at a glance*. <https://www.oecd.org/aidfortrade/data/aidfortradeataglance.htm>



regional development banks.⁵³ It is important that all these technical assistance and capacity-building activities are well-coordinated to ensure that developing country Members and LDC Members in need for assistance can easily find the support to address their situation. The expectation is that the newly created voluntary mechanism will help coordinate the provision of assistance to implement the FSA.

⁵³ The OECD identifies Japan, Germany, the World Bank, the EU, France, the Asian Development Bank, and the African Development Bank as the major donors for Aid for Trade. See OECD. (n.d.). *Aid for trade at a glance*. <https://www.oecd.org/aidfortrade/data/aidfortradeataglance.htm>

8.0

Notifications and Transparency





8.1 Introduction

In addition to the general subsidy notification obligation already established in Article 25 of the SCM Agreement, the FSA contains a number of obligations to make notifications and provide information, both to the Committee and to other Members. Some of these notifications must be made immediately any time a certain event occurs, others once and then only again if legislation, procedures, or measures change, and yet others have to be made on an annual or regular basis. Most notification and information provision obligations are found in Article 8 of the FSA, although there are other provisions of the FSA that include notification requirements as well. The FSA's notification and information provision obligations are the following:

- **Final sentence of Article 3.3(b):** Obligation on coastal Members to notify the Committee of any affirmative determination of IUU fishing made by domestic authorities.
- **Article 3.5:** Obligation on subsidizing Members to notify the Committee of measures taken pursuant to the subsidy prohibition in Article 3.1.
- **Article 8.1(a):** Obligation on Members to provide information about the type of fishing activity for which each subsidy is provided as part of their regular notification of fisheries subsidies.
- **Article 8.1(b):** Limited obligation (i.e., “to the extent possible”) on Members to provide information, as part of their regular notification of fisheries subsidies, about: (i) the status of stocks in the fishery for which each subsidy is provided and whether such stocks are shared with another Member or managed by an RFMO/A, (ii) relevant conservation and management measures, (iii) fleet capacity in the subsidized fishery, (iv) names and identification of vessels that benefit from the subsidy, and (v) catch data by species in the subsidized fishery.
- **Article 8.2:** Obligation on Members to notify the Committee annually of a list of vessels and operators that have been determined as having engaged in IUU fishing by domestic authorities.
- **Article 8.3:** Obligation on Members to inform the Committee, within one year of entry into force of the FSA, of measures in place or taken to implement the FSA, and to promptly inform the Committee of any changes to such measures thereafter as well as new measures.
- **Article 8.4:** Obligation on Members to provide the Committee, within one year of entry into force of the FSA, with a description of their fisheries regime (laws, regulations, administrative procedures) relevant to the FSA and an obligation thereafter to inform the Committee promptly of any changes thereto.
- **Article 8.5:** Obligation on Members to respond as quickly as possible and comprehensively to requests for additional information from other Members regarding the notifications and information provided under Article 8;
- **Article 8.6:** Obligation on Members to notify the Committee, upon entry into force of the FSA, of any RFMO/A to which they are parties, including relevant information on such RFMO/A, and an obligation thereafter to notify any changes to such information promptly.



All of the FSA's notification and transparency obligations are covered in Tables 8.A and 8.B in the Checklist, which allow for an assessment of whether a Member is currently aligned with such obligations and whether the required mechanisms are in place to enable ongoing alignment, respectively. An additional table (Table 8.C) provides a convenient summary of all notification and transparency requirements and timelines under the FSA but does not require any additional input.

8.2 Notification and Transparency Obligations (Articles 8, 3.3, and 3.5)

Summary box

Obligations: There are a number of transparency obligations in the FSA that are mostly included in Articles 8 but also in Articles 3.3 and 3.5. Such obligations include the following:

- Provision of additional fisheries-related information as part of the Member's regular subsidy notification.
- Annual notification of a list of vessels and operators that have been determined as having been engaged in IUU fishing by the Member's authorities.
- One-off notification of the measures taken by the Member to implement and administer the FSA, as well as notification of any subsequent changes or new implementation measures.
- One-off provision of a description of the Member's fisheries regime as well as any subsequent modifications.
- One-off notification of any RFMO/A to which the Member is a party, including the details of such agreements and any changes of such information.
- Notification of any affirmative determination of IUU fishing by coastal Members, promptly when the determination is made.

S&D provisions: For LDCs and developing country Members with an annual share of the global volume of marine capture production not exceeding 0.8%, the additional fisheries related information that must be included in regular subsidy notifications will only need to be provided once every 4 years rather than every second year.



Relevant Legal Text

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

- 8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall
- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}: type or kind of fishing activity for which the subsidy is provided;
 - (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared¹⁴ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) fleet capacity in the fishery for which the subsidy is provided;
 - (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (ii) catch data by species or group of species in the fishery for which the subsidy is provided¹⁵.
- 8.2 Each Member shall notify the Committee in writing on an annual basis of a list of vessels and operators that it has determined as having been engaged in IUU fishing.
- 8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.
- 8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations, and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter.

¹² For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

¹³ For LDC Members, and developing country Members, with an annual share of the global volume of marine capture production not exceeding 0.8 per cent as per the most recent published FAO data, as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

¹⁴ The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

¹⁵ For multispecies fisheries, a Member instead may provide other relevant and available catch data.



A Member may meet this obligation by providing to the Committee an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information.

- 8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member considers that a notification or information under this Article has not been provided, the Member may bring the matter to the attention of such other Member or to the Committee.
- 8.6 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.¹⁶ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/A notified pursuant to this Article.
- 8.7 Members recognize that notification of a measure does not prejudice (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.
- 8.8 Nothing in this Article requires the provision of confidential information.

¹⁶ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

Other provisions setting out notification requirements are found in Articles 3.3 and 3.5 of the Agreement:

ARTICLE 3: SUBSIDIES CONTRIBUTING TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴

[...]

3.3

[...]

The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

[...]

- 3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with article 8.3.

⁴ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.



Current Alignment: Completing Table 8.A (Notification and transparency obligations)

General Considerations

Article 8 sets out most of the notification and information provision obligations of the FSA, although some notification requirements are also included in Articles 3.3 and 3.5. While some of these obligations may be fulfilled by adding information to the standard form already used for regular subsidy notifications (questionnaire G/SCM/6/Rev.1), others may simply be fulfilled by submitting information as plain text or web links sent to the Secretariat. The most important aspect in meeting a notification obligation is to include in the notification document the information requested in the relevant provision of the FSA. The WTO's Documents Online website contains multiple examples of notifications submitted by Members, and the WTO Secretariat that will service the Committee will be available to assist in the event this is needed. The questions in Table 8.A look at all the FSA's notification and transparency obligations in turn, allowing you to determine whether your government is currently aligned with such obligations.

A complete list of all the notification and information provision obligations that must be fulfilled under the FSA, including the timing for making such notifications or providing the relevant information, is also included in Table 8.C.

Question 1a: Has the Member's regular fisheries subsidies notification been submitted pursuant to Article 25 of the SCM Agreement in a timely manner?

This question relates to the obligations in Article 8.1, which require Members to provide additional, fisheries-related information as part of their regular notifications of fisheries subsidies. A prerequisite to fulfil that obligation is thus to submit such regular notifications of fisheries subsidies under Article 25 of the SCM Agreement.

The general obligation under the SCM Agreement requires all WTO Members to notify fisheries subsidies,⁵⁴ and there are no provisions in the FSA that would change this obligation in any way. Because submitting subsidies notifications is a universal obligation for all WTO Members, that means that even if your government has not provided any subsidies, it still needs to submit a "nil" notification, that is, a notification indicating that your authorities did not provide any subsidies in the period under review.

Article 8.1 of the FSA requires that certain information is provided as part of Members' regular fisheries subsidies notifications to the SCM Committee, so the obligation under these articles of the FSA does not impose an obligation to file an additional and separate notification to that already required under the SCM Agreement. Nor does the FSA requirement change the timing for notification set by SCM Agreement and SCM Committee.

⁵⁴ An understanding reached in the SCM Committee (G/SCM/M/46, para. 43, and G/SCM/M/53, para. 35) allows Members to submit new and full notifications by June 30 of every second year (the odd numbered years), while "de-emphasizing" the annual updating notifications referred to in Article 25.6, meaning that, in practice, Members should only be submitting their new and full notifications once in every 2 years. More on this and other aspects of the SCM Agreement's notification requirements can be found here: https://www.wto.org/english/tratop_e/scm_e/scm_notification_handbook_e.pdf



To answer the question, you will need to verify if and when the required fisheries subsidies notification was submitted to the WTO. If it was, this notification will be available on the subsidies notification portal on the WTO Documents Online website.⁵⁵ It can also be found through the page on “Subsidies and countervailing measures” on the WTO website.⁵⁶ If the required notification is not found in the WTO database, it means that your government has not yet made its notification. This must be done without further delay. If the notification has been made, you will need to check whether it includes all the subsidies that fall within the scope of the FSA, which can be done by comparing the notification to the information included in the list of subsidies in Table 2.1. If some subsidies are missing from your government’s notification, they must be added, which can be done through a supplement or addendum to your existing notification. If the notification has been made and includes all the subsidies provided by your authorities that fall within the scope of the FSA, the following questions will help you to determine whether the necessary information was included.

Question 1b: If such notification was submitted, did it include information on the type or kind of fishing activity for which the subsidy is provided?

This question relates to Article 8.1(a), which denotes additional specific information that must be provided as part of your government’s regular notification of fisheries subsidies under Article 25 of the SCM Agreement. According to this provision, for each subsidy that fall within the scope of the FSA, your subsidy notification must include information on the type or kind of fishing activity for which the subsidy is provided. Importantly, footnote 13 allows LDC and developing country Members with an annual share of less than 0.8% of the global volume of marine capture production to provide this information every 4 years. In practice, this would mean providing such information with every second subsidy notification.

The explanations related to Question 1a above contain a description of how you can determine whether the relevant subsidies notification has been submitted and whether it includes all the subsidies that fall within the scope of the FSA. If all relevant subsidies have been notified to the WTO, you will then need to verify whether, for each relevant subsidy, the notification includes information on the type or kind of fishing for which it was provided. If the flexibility in footnote 13 applies to your government, one of the notifications made in the last 4 years will need to include this information (not necessarily the last one).

If this requirement has been met by providing the required information, there is no further action that needs to be undertaken in the context of this question. However, if such information was not provided in your government’s most recent subsidies notification (or in a notification made in the last 4 years in the case of Members benefiting from the flexibility in footnote 13) for all the subsidies covered by the FSA, your authorities will need to provide this additional information. This can be done through a supplement or addendum. Note that subsidy notifications submitted before the entry into force of the FSA do not have to

⁵⁵ The address of the website is: <https://docs.wto.org>. It has a specific tab on “Notifications”, which allows to find all notifications made by a Member.

⁵⁶ To do so, go to the following address: https://www.wto.org/english/tratop_e/scm_e/scm_e.htm. Using the search function in the yellow box, all notifications made by one particular Member can be obtained by selecting that Member under “Notifications by individual members.”



contain the information referred to in Article 8.1(a). This requirement only applies to subsidy notifications that will be submitted to the WTO after the entry into force of the Agreement.

Question 2a: Is the Member in a position to provide information on the elements listed in Article 8.1(b) as per the list below:

- (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared with any other Member or are managed by an RFMO/A.
- (ii) conservation and management measures in place for the relevant fish stock.
- (iii) fleet capacity in the fishery for which the subsidy is provided.
- (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy.
- (v) catch data by species in the fishery for which the subsidy is provided?

This question relates to Article 8.1(b), which denotes additional specific information that must be provided as part of your government's regular notification of fisheries subsidies under Article 25 of the SCM Agreement, provided that your government is in a position to do so. As reflected in the question, such additional information relates to stock status, conservation and management measures, fleet capacity, name and identification of vessels, and catch data. Bear in mind that your government is only required to provide the information requested under Article 8.1(b) "to the extent possible." Thus, if it is not possible to provide the information required under Article 8.1(b) because it is not readily available or reasonably accessible to your government, it will not be necessary to provide it. When it is possible, this information must be provided for each subsidy that falls within the scope of the FSA.

To answer this question, you will thus need to determine whether your government is in a position to provide such information. The answer may be different for different pieces of information, which you can indicate in the table. If the inventory tables at the beginning of the Checklist (in particular Tables 2.1 to 2.3) have been filled with all the information available to your government, you may use such tables to determine whether the various pieces of information required under Article 8.1(b) are available or currently missing. For information on the status of fish stocks in the fishery for which the subsidy is provided (per Article 8.1(b)(i)), as well as on information on conservation and management measures in place for the relevant fish stocks (per Article 8.1(b)(ii)), you can check Table 2.3 (Information on stocks fished in subsidised fisheries; see second and fifth columns). For information on fleet capacity in the fishery for which the subsidy is provided (per Article 8.1(b)(iii)), as well as on the name and identification number of the fishing vessel or vessels benefitting from the subsidy (per Article 8.1(b)(iv)), you may refer to Table 2.2.A (Information on subsidised fisheries; see third column and second column, including possible annexes). For information on catch data by species in the fishery for which the subsidy is provided (per Article 8.1(b)(v)), you can check Table 2.2.B (Catch data). Alternatively, instead of looking at separate inventory tables, you may also refer to Table 2.5, which summarises the availability of information to fill these inventory tables.



The information required under Article 8.1(b)—which your government is in a position to provide, either because it is already available or because it can be generated—needs to be provided as part of your government’s regular subsidy notification to the WTO (see Question 2b). In cases where your government does not have reasonable access to this information, or cannot generate the information, there is no obligation to provide this information when notifying subsidies.

Question 2b: If the notification referred to in Question 1a was submitted, did it include information on the elements for which the answer to Question 2a is “Yes”?

This question only applies to the information requested under Article 8.1(b) that your government is in a position to provide, as identified under Question 2a. Such information must be provided as part of your government’s regular notification of fisheries subsidies under Article 25 of the SCM Agreement. Footnote 13 permits LDCs and developing country Members with an annual share of less than 0.8% of the global volume of marine capture production to provide such information every 4 years. However, this flexibility does not release these Members from the general transparency and subsidy notification requirements established under Article 25 of the SCM Agreement and subsequent decisions of the WTO Committee on Subsidies and Countervailing Measures in that regard, which require that all specific subsidies, including fisheries subsidies, be notified every second year.

The explanations related to Question 1a above contain a description of how you can determine whether the required subsidies notification has been submitted and whether it includes all the subsidies that fall within the scope of the FSA. If a timely notification of all relevant subsidies has been made, you will then need to verify whether, for each relevant subsidy, the notification included the information requested under Article 8.1(b), provided that your government has ready and reasonable access to it. For all the information that you identified under Question 2a as possible to provide, you should thus check if this information was provided in such subsidy notification. If the flexibility in footnote 13 applies to your government, one of the notifications made in the last 4 years will need to include this information (not necessarily the last one).

If your government has made the notification and included the information required under Article 8.1(b) that your government has access to, no further action is required under this question. However, if such information was not provided in your government’s most recent subsidies notification (or in one of the notifications made in the 4 four years in the case of Members benefiting from the flexibility in footnote 13), your authorities will need to provide this additional information. This can be done through a supplement or addendum. Note that subsidy notifications submitted before the entry into force of the FSA do not have to contain the information referred to in Article 8.1(b). This requirement only applies to subsidy notifications that will be submitted to the WTO after the entry into force of the Agreement.

Question 3: Has the Member submitted its annual notification of the list of vessels and operators it has determined as having been engaged in IUU fishing to the Committee?

Article 8.2 requires each Member to notify the Committee annually of a list of vessels and operators that it has determined as having been engaged in IUU fishing. The list of IUU



determinations relates only to determinations made by your domestic authorities, and not to determinations made by any other Member regarding your domestic vessels or operators. Table 2.4 of the Checklist will ideally include all the relevant IUU determinations, provided it is maintained up to date. Note that there is no obligation under the FSA to make IUU determinations, but there is an obligation to notify the determinations that are made by your authorities.

To answer this question, you will thus need to check whether the required notification was made. If it was, you should be able to find such notification on the WTO Documents Online website.⁵⁷ If you cannot find it on this portal, or the notification on the portal is not recent, it likely means that your government has not yet made its annual notification, in which case this must be done. If the notification has been made, there is no further action that must be taken under this question.

Note that this is an obligatory notification, which means that if your authorities have not made any IUU determinations, you must submit a “nil” notification, that is, a notification indicating that your authorities did not make any IUU determinations in the period under review. Unlike under Article 8.1, there are no S&D provisions, and all developing country Members also need to make these notifications annually.⁵⁸

It is important to note that the last sentence of Article 3.3 of the FSA also requires coastal Members to notify each affirmative determination to the Committee individually, which is a separate obligation addressed in Question 4 below.

Question 4: Has the Member notified determinations that a vessel or operator has engaged in IUU fishing made in its capacity as coastal Member (if any)?

The last sentence of Article 3.3 of the FSA obliges the coastal Member to notify each affirmative determination to the Committee. This means that each and every IUU determination made by your authorities in a coastal Member capacity must be notified to the Committee individually, without waiting for the annual notification of the list of vessels and operators that your authorities have determined to be engaged in IUU fishing (as per Article 8.2). Notification under Article 3.3 will enable all Members to perform the necessary verifications to see whether the vessel or operator that is the subject of such determination, or any of their support vessels, is receiving or applying for fisheries subsidies, which could be followed by the termination or denial of such subsidy, consistent with the Article 3.1 prohibition. Without such timely notifications, Members will not have the information and legal basis needed to terminate or deny such subsidies.

Contrary to the requirements of Article 8.2 that oblige every WTO Member to submit an annual notification, Article 3.3 only creates an obligation for Members who are actually making IUU determinations. If your authorities have not made any IUU fishing

⁵⁷ The address of the website is: <https://docs.wto.org>. It has a specific tab on “Notifications” that allows you to find all notifications made by a Member. Notifications regarding the FSA will likely have the code G/FS/N/*.

⁵⁸ Note that a subsequent notification could simply indicate, with reference to the previous notification (including the official document number) that no changes have taken place in the past 12 months.



determinations in a coastal state capacity, or if they never do so (for example, in the case of landlocked Members), there is no obligation to make any notifications under Article 3.3.

If your government made IUU determinations from the moment that the FSA entered into force, they will need to be notified to the Committee. To verify whether all IUU determinations made by your authorities in a coastal Member capacity have been notified to the Committee, you can search for such notifications on the WTO Documents Online website.⁵⁹ The list of IUU determination notifications made by your government should be compared to the list of IUU determinations in Table 2.4 to see if all relevant determinations (those made in a coastal Member capacity) have been notified. If all relevant IUU fishing determinations in Table 2.4 have been notified, no further action must be undertaken under this question. Any outstanding IUU fishing determination made by your authorities in a coastal Member capacity for which the relevant notification has not yet been submitted should be notified to the Committee without further delay.

Note that there are other notification-related provisions under Article 3.3(b)(i) and (ii) of the FSA. These are not notification obligations, however, but rather conditions that need to be met for an IUU fishing determination made by a coastal Member to trigger the subsidy prohibition in Article 3.1. For that reason, these provisions are not addressed in that section but in Section 3.1.

Question 5

5a. Has the Member informed the Committee of measures in existence or taken to ensure the implementation and administration of the FSA within 1 year of the date of its entry into force?

5b. Has the Member promptly informed the Committee of subsequent changes to such measures (if any)?

5c. Has the Member also notified new measures taken to implement the prohibitions set out in Article 3 (if any) to the Committee?

This set of three questions relates to the transparency obligations set out in Articles 8.3 and 3.5 of the FSA. These provisions require each Member to inform the Committee of measures in existence or taken to ensure the implementation and administration of the FSA, including to implement the prohibitions of Articles 3, 4, and 5, within 1 year of the date of entry into force of the FSA, as well as any changes to such measures and new measures taken to implement the IUU subsidy prohibitions (Article 3).

The first part of Article 8.3 obliges each Member to prepare a comprehensive and detailed notification or communication describing measures that were taken to ensure proper implementation and administration of the FSA, which needs to be submitted to the Committee within 1 year of the FSA's entry into force, paying particular attention to the description of the measures taken to implement the FSA's subsidy prohibitions. As a reminder, such prohibitions relate to subsidies to vessels or operators engaged in IUU fishing, or any of their support vessels (Article 3.1); to subsidies to fishing and fishing-

⁵⁹ The address of the website is: <https://docs.wto.org>. It has a specific tab on "Notifications" that allows you to find all notifications made by a Member. Notifications regarding the FSA will likely have the code G/FS/N/*.



related activities regarding overfished stocks (Article 4); and to subsidies to fishing and fishing-related activities on the high seas that occur outside the competence of a relevant RFMO/A (Article 5.1). Any subsequent changes to relevant measures must also be notified or communicated to the Committee. The last sentence of Article 8.3, as well as Article 3.5, oblige Members to promptly notify any new measures taken to implement the IUU subsidy prohibition to the Committee.

To answer this question, you will need to verify if your government has notified or communicated to the Committee all the measures in existence and/or taken by your authorities to implement the FSA. This includes any provisions in your laws and regulations, or any administrative procedures, requiring that no subsidies be granted or maintained in circumstances where subsidies are prohibited. Note that the “measures” on which information needs to be provided would likely have to be more specific than simply referring to your government’s laws, regulations and/or administrative procedures in general. You should rather identify provisions that specifically address particular aspects of implementation. This, for example, could relate specifically to the provisions that provide for the withdrawal or non-granting of certain subsidies or for the communication of various determinations (e.g., about IUU vessels or operators, or overfished stocks) between relevant authorities. Many of these “measures” will have been mentioned in the responses given to the questions in the “ongoing alignment” tables in Sections 3, 4, and 5, so you may use these responses to inform your verification of whether the relevant measures were notified or communicated to the Committee.

If changes have been made to your measures implementing the FSA, you will need to verify that these changes have been “promptly” notified or communicated to the Committee. The meaning of “promptly” likely will depend on the nature of the changes, that is, how extensive the changes are and the need to translate the changes into one of the official WTO languages (English, French, and Spanish) if none of these is the original language of the legislation or regulations. The ordinary meaning of “promptly” is “with little or no delay,”⁶⁰ so Members are expected to act with due speed and give the matter priority. Thus, it should be done as soon as practicably possible.

Note that this obligation also covers the obligation under Article 3.5 that specifically relates to the notification of measures taken to implement the prohibition of subsidies that contribute to IUU fishing found in Article 3. In practice, this means that each decision to suspend, terminate, or not to grant a subsidy following an IUU fishing determination regarding a particular vessel or operator would need to be notified to the Committee. The Article 3.5 requirement would also cover any revision of broader measures that your government is taking to implement this prohibition.

Any notification already made by your government can be found on the WTO Documents Online website.⁶¹ If the initial notification or communication of measures in place or taken to ensure implementation and administration of the FSA has not been made by

⁶⁰ Oxford Languages Dictionary (languages.oup.com).

⁶¹ The address of the website is: <https://docs.wto.org>. It has a specific tab on “Notifications” that allows you to find all notifications made by a Member. Notifications regarding the FSA will likely have the code G/FS/N/*.



your government, this must be done without delay. Likewise, if the existing notifications or communications made by your government do not cover all relevant measures, or do not fully reflect the subsequent changes made to such measures, this additional information must be provided to the Committee. If all relevant measures and subsequent changes have been notified or communicated to the Committee, there is no further action that needs to be undertaken in the context of this question.

Question 6: Has the Member provided the Committee with a description of its fisheries regime with references to its laws, regulations, and administrative procedures relevant to the FSA, including any subsequent modifications?

This question relates to Article 8.4, which obliges all WTO Members to submit a description of their fisheries regimes to the Committee in the year that follows entry into force of the FSA, and to inform the Committee of any subsequent modification of that regime. This obligation applies to all Members, including those that might be landlocked, even though they have no domestic marine fisheries sector. These Members may simply, for example, submit a “nil” notification in that regard, indicating that they have no fisheries regime that is relevant to the FSA.

To answer this question, you will need to check if your authorities have notified or communicated such description of your fisheries regime to the Committee, including all your laws, regulations and/or administrative procedures that are relevant to the FSA, as well as any subsequent modifications. Note that provisions on, for instance, freshwater fishing and aquaculture do not have to be included, as these would not be “relevant” to the FSA. Nevertheless, the scope is much wider than that of the “measures” referred to in Article 8.3 (Question 5 above). Importantly, Article 8.4 specifies that this notification or communication may simply include “an up-to-date electronic link to the Member’s or other appropriate official web page that sets out this information” rather than having to include a separate description of the relevant laws, regulations and/or administrative procedures.

Any notification already made by your government can be found on the WTO Documents Online website.⁶² If the required notification or communication has not been made by your government, this must be done without delay. Likewise, if the existing notifications or communications made by your government do not cover all relevant aspects of your domestic fisheries regime, or do not fully reflect the subsequent changes made to that regime, this additional information must be provided to the Committee. If all relevant laws, regulations, and administrative procedures, as well as all subsequent changes, have been notified or communicated to the Committee, there is no further action that needs to be undertaken in the context of this question.

⁶² The address of the website is: <https://docs.wto.org>. It has a specific tab on “Notifications” that allows you to find all notifications made by a Member. Notifications regarding the FSA will likely have the code G/FS/N/*.



Question 7a: Has the Member received any requests for additional information by another Member regarding the notifications and information provided under Article 8?

This question and the next one relate to the obligation in Article 8.5 that requires all Members to respond “as quickly as possible in writing and in a comprehensive manner” to any requests by another Member regarding any notifications and information provided under Article 8.

This question considers whether another Member has requested additional information on any of the notifications or communications that were submitted pursuant to the obligations in Article 8. The form of the request (oral, written) is not prescribed. While good practice suggests that such requests be made in writing, this might not always be followed, and questions might be presented orally during Committee meetings. Under the circumstances, to seek to ensure that your government will be in a position to keep track of all such requests, be they oral or written, it could be useful to instruct your government’s representatives to the Committee to report on a timely basis any questions received and/or to invite Members making oral requests for more information to present questions in writing.

You will need to verify if your government received such a request for information. Such a request might have been received through the regular diplomatic channels and would normally be forwarded to the responsible agency through the ministry of Foreign Affairs. You can check the WTO Documents Online website to see whether any such requests in writing were directed to your government.⁶³ For possible oral requests, reports of the Committee meeting by your government’s representatives or the minutes of such meetings by the WTO Secretariat can be consulted. If you have received any requests for additional information, continue to Question 7b. However, if no such request has been received, you have no current obligations under Article 8.5 and you can move to Question 8 directly.

Question 7b: Has the Member responded to the request as quickly as possible, in writing, and in a comprehensive manner?

This question continues from Question 7a, and you only need to respond to it if your government has actually received a request for additional information on any of your government’s notifications or communications submitted pursuant to Article 8. If that is the case, your authorities have an obligation to respond to this request “as quickly as possible.”

The FSA does not provide any guidance on what “as quickly as possible” means in this context. It is reasonable to assume, however, that this would depend on the number, scope, and nature of the questions. Moreover, Article 8.5 requires that the response be made “in writing and in a comprehensive manner,” so this implies that the Member must be afforded adequate time to gather the relevant information and set it out in a formal response to be signed by the relevant authority. It may also be necessary to consider whether the response is being prepared by an LDC or developing country Member who may need more time to gather relevant information and prepare the response. Finally, if it has to be translated into one of the official languages of the WTO, this will also take time. Nevertheless, “as quickly as possible” suggests that the Member must act with due speed and not delay the reply unnecessarily.

⁶³ The address of the website is: <https://docs.wto.org>.



It could be useful to note that only the Member requesting the additional information needs to receive the response in writing. The Committee does not need to be copied in the response. However, for transparency purposes, and especially if the request was expressed orally during a Committee meeting, the responding Member might choose to make the response known to all WTO Members.

If your government has already provided a comprehensive written response to the request for additional information that it received from another Member, there is no further action that needs to be undertaken in the context of this question. If, however, your government has not yet provided such response, this must be done as quickly as possible.

Question 8: Has the Member notified the Committee in writing, upon entry into force of the FSA, of any RFMO/As to which it is a party and included the specific information required under Article 8.6? Have the consequent changes to this information (if any) been notified promptly to the Committee?

This question is about the notification obligation found in Article 8.6, which requires your government to notify the Committee, upon entry into force of the FSA, of all RFMO/As that your country/territory is a member of and to provide the following information as part of that notification:

- The text of the legal instruments instituting the RFMO/As
- The areas and species under their competence
- Information on the status of the managed fish stocks
- A description of their conservation and management measures
- The laws and procedures governing their IUU fishing determinations
- The updated lists of vessels and/or operators that they have determined as having been engaged in IUU fishing.

According to Article 8.6, all the changes to this information must also be notified “promptly” to the Committee. It is important to note that such notifications—be it the initial notification for a particular RFMO or subsequent notifications about relevant changes—can be made either individually or by a group of Members. This means that for each particular RFMO/A, its parties may decide to make a joint notification with the required information and to jointly notify any subsequent change.

To verify if a complete initial notification has been made—and if all subsequent changes to the relevant information have also been notified to the Committee—you can search for such notifications on the WTO Documents Online website.⁶⁴ If all the required information has been notified to the Committee, there is no further action that needs to be undertaken under this question, but any further change to this information will also need to be notified “promptly” to the Committee. If the required information has not been notified, this must be done as quickly as possible.

⁶⁴ The address of the website is: <https://docs.wto.org>. It has a specific tab on “Notifications” that allows you to find all notifications made by a Member. Notifications regarding the FSA will likely have the code G/FS/N/*.



Ongoing Alignment: Completing Table 8.B (Notification and transparency obligations)

General Considerations

The obligations under Article 8 include numerous different notification and information provision requirements, which need to be submitted at different intervals. Whereas Table 8.A relates to current alignment with these obligations, Table 8.B relates to the implementation steps to be taken to enable ongoing alignment with these obligations. As such, the table addresses the question of whether the necessary procedures or mechanisms are in place and operate in a way that enables alignment with these obligations on an ongoing basis, so that the required notifications can be made and the required information can be provided to the Committee every time it is needed. In particular, the table presents a series of questions that ask whether the existing procedures or mechanisms in place allow your government (1) to regularly generate or collect the information that needs to be notified, and (2) to notify or provide it to the Committee when it is needed.

Questions 1a and 1b in the Checklist's Table 8.B address the additional fisheries-related information that your government must provide as part of its regular subsidy notifications (Article 8.1). While Questions 2a and 2b cover the requirement to notify annually a list of vessels and operators determined as having been engaged in IUU fishing by domestic authorities (Article 8.2), Question 3 is about the obligation to notify any IUU determination made in a coastal State capacity when such determination is made (Article 3.3). Question 4, finally, addresses together the transparency obligations that require your government to notify or communicate to the Committee any subsequent change to information already communicated in an initial notification (as per Articles 8.3 and 3.5, 8.4, and 8.6).

Note that Table 8.C also provides you with a complete list of all the notification and information provision obligations that must be fulfilled under the FSA, including the timing for making such notifications or providing the relevant information. As such, this table provides you with a useful summary of the FSA's transparency requirements.

Question 1a: Does the Member have procedures or mechanisms in place to regularly generate or collect the following information?

This question is about the procedures or mechanisms that need to be in place to regularly collect or generate the information that must be provided in your government's regular notifications of fisheries subsidies under Article 25 of the SCM Agreement (as per Article 8.1 of the FSA). Such information includes, at the very least, the following elements:

- All relevant fisheries subsidies, that is, the subsidies that fall within the scope of the FSA.
- For each subsidy, the type or kind of fishing activity for which the subsidy is provided.

For each subsidy, the following information must also be collected or generated (and then provided in your government's subsidy notifications) to the extent possible:

- The status of the fish stocks in the fishery for which the subsidy is provided (e.g., overfished, maximally sustainably fished, or underfished) and whether such stocks are shared with any other Member or are managed by an RFMO/A.



- Conservation and management measures in place for the relevant fish stock.
- The fleet capacity in the fishery for which each subsidy is provided.
- The name and identification number of the fishing vessels benefitting from the subsidy.
- Catch data by species or group of species in the fishery for which the subsidy is provided.

In the table, you will need to indicate whether procedures or mechanisms exist to regularly collect the relevant information. Such procedures or mechanisms may rely on keeping Tables 2.1–2.4 of the Checklist up to date, as these tables allow users to regularly collect information both on the fisheries subsidies covered by the agreement and on the elements of additional fisheries-related information required under Article 8.1. The response may be different for different elements. This is reflected in the table, which allows you to enter a separate response for each element in a separate row. Note that providing different responses will mean that the actions required to enable ongoing alignment (and the possible technical assistance and capacity building needs), will also vary from an element to the other.

Importantly, Tables 2.1–2.3 of the Checklist in Section 2 allow you to collect all the information that is available to your authorities on these various elements. The relevant information collection procedures and mechanisms may thus consist of regularly updating these tables with all the data that is available or reasonably accessible to your authorities. Section 2 concludes with a “Data collection” table (Table 2.5) which allows you to indicate whether mechanisms are in place to collect such fisheries-related information on an ongoing basis. The response and information you provided in Table 2.5 about such information-collection mechanisms can thus also be used to answer Question 1a, as this information concerns the same data collection procedures and mechanisms.

Note that information on certain elements of Article 8.1 listed above only need to be provided to the extent possible. This means that if information on a specific element of the list is not available to your government or cannot be generated, either for a specific subsidy or for all subsidies, then it must only be notified to the extent that it was available. Procedures or mechanisms to generate and collect the relevant information will thus only be required for information that is readily available or reasonably accessible to your authorities. Even if not required, however, establishing new procedures to generate and collect new, previously unavailable information may be a useful investment in understanding the biological and economic realities of a Member’s fisheries.

Bearing in mind the above, indicate in the table whether the necessary procedures or mechanisms to regularly collect and record the information described above are in place. If the necessary procedures or mechanisms are in place to regularly collect all relevant information, you may simply indicate “none” in the column “actions required to enable ongoing alignment.” In that case, no further action is needed in the context of this question. However, if you do not have the necessary procedures or mechanisms in place, you should clearly indicate what procedures or mechanisms would be required, as well as what actions would be needed to set up those procedures or mechanisms, and what assistance your authorities would need to do so, if any. It is important to note that collecting the information needed to



fulfil many of the requirements in Article 8 might require close cooperation between different government institutions.

Question 1b: For the information listed above, does the Member have a procedure or mechanism in place to provide that information regularly to the WTO as part of regular notification of its fisheries subsidies?

While Question 1a relates to whether a procedure or mechanism is in place to collect and record the relevant information, Question 1b inquires whether the necessary procedure or mechanism is in place to provide such additional fisheries-related information as part of your government's regular notification of fisheries subsidies under Article 25 of the SCM Agreement (as per Article 8.1 of the FSA). Importantly, footnote 13 allows LDC and developing country Members with an annual share of less than 0.8% of the global volume of marine capture production to provide this additional information every 4 years. In practice, this would mean providing such information with every second subsidy notification.

There are no particular requirements in the FSA as regards the exact procedure or mechanism your government should have in place. It is, therefore, entirely up to your government to determine what the appropriate procedure or mechanism is for making subsidy notifications and including the required additional fisheries-related information in such notifications. It is important to decide whether notifications will be made by one central institution, or if different government institutions will be empowered to make them and held responsible for their content. As there are numerous notification obligations in other WTO agreements, you will likely already have a system in place for this type of action, and this will need to be extended to the FSA notification obligations. It is important to note that the elements of additional information to be provided as part of regular fisheries subsidies notification, as required by Article 8.1, might be available in a government agency or agencies different than the one that would be submitting the subsidy notification, and the procedure or mechanism referred to in this question would need to provide for cooperation between these different agencies.

Note that Tables 2.1–2.3 of the Checklist allow users to regularly collect information both on the fisheries subsidies covered by the agreement and on the elements of additional fisheries-related information that must be provided as part of regular subsidy notifications. If such tables are regularly kept up to date by your authorities, they may be used as part of the procedure or mechanism to notify fisheries subsidies, including by providing the fisheries-related information required under Article 8.1.

If the necessary procedure or mechanism is in place to submit the fisheries subsidies notification and include additional information required by Article 8.1, you may simply indicate “none” in the column “actions required to enable ongoing alignment.” In that case, no further action is needed in the context of this question. However, if that is not the case, clearly indicate what procedure or mechanism would be required, as well as what actions would be needed to set up those procedures or mechanisms. If technical assistance is needed to establish the necessary procedure or mechanism, indicate what technical assistance or capacity building needs your authorities have and be as precise as possible.



Question 2a: Does the Member have a procedure or mechanism in place to update the list of vessels and operators that it has determined as having been engaged in IUU fishing annually?

While the FSA does not obligate Members to initiate IUU fishing investigations or make IUU fishing determinations, Article 8.2 requires all Members to notify annually a list of vessels and operators that their authorities have determined as having been engaged in IUU fishing. Even if no determinations have been made by your authorities, a “nil” notification must be submitted, that is, a notification indicating that your authorities did not make any IUU determinations in the period under review.

A necessary step to be able to fulfil this notification requirement is thus to compile and keep up to date a list of IUU fishing determinations made by your authorities. Importantly, Table 2.4 of the Checklist in Section 2 allows you to collect information on all such determinations of IUU fishing made by your authorities. The procedure or mechanism in place may thus consist of regularly updating that table. Section 2 of the Checklist concludes with a “Data collection” table (Table 2.5) which allows to indicate whether mechanisms are in place to collect such information about IUU fishing determinations on an ongoing basis. The response and information you provided in Table 2.5 about such information-collection mechanism can thus also be used to answer Question 2a, as this information concerns the same data collection procedures and mechanisms.

In the table, indicate if procedures or mechanisms are in place to annually collect information on IUU fishing determinations made by your authorities and update the list of vessels and operators that they have determined as having been engaged in IUU fishing. If the necessary procedures or mechanisms are already in place, you may simply indicate “none” in the column “actions required to enable ongoing alignment.” In that case, no further action is needed in the context of this question. However, if the necessary procedures or mechanisms are not in place, you should clearly indicate what procedures or mechanisms would be required, as well as how you would go about setting up those procedures or mechanisms.

Question 2b: Does the Member have a procedure or mechanism in place to notify such list annually?

While Question 2a relates to whether the necessary procedure or mechanism is in place to maintain a regularly updated list of vessels and operators identified as having been engaged in IUU fishing by your authorities, Question 2b asks whether the necessary procedure or mechanism is in place to notify this list to the Committee annually (as required under Article 8.2).

As explained in the explanations related to Question 1b (see above for more details), the relevant procedure or mechanism may need to provide for cooperation between different agencies. In the context of this question, it is important that the agency responsible for IUU fishing investigations and determinations shares the necessary information (i.e., the lists of vessels and operators it has determined as having been engaged in IUU fishing) with the government agency responsible for WTO notifications, or submits the corresponding annual notification to the WTO by itself if that is the existing practice, in a timely manner. Note that Table 2.4 of the Checklist allows for the recording of all relevant IUU fishing determinations



made by your authorities. If this table is regularly kept up to date by your authorities, it may be used as part of the procedure or mechanism to notify the IUU list annually.

If the necessary procedure or mechanism is in place to submit the notification of the IUU list referred to in Article 8.2 annually, you may simply indicate “none” in the column “actions required to enable ongoing alignment.” In that case, there is no need to undertake any further action in the context of this question. However, if that is not the case, indicate clearly what action would be needed to set up this procedure or mechanism. If technical assistance would be needed to establish the necessary procedure or mechanism, indicate what technical assistance or capacity building needs your authorities have and be as precise as possible.

Question 3: Does the Member have a procedure or mechanism in place to notify any affirmative IUU fishing determination made in its coastal Member capacity to the Committee?

This question relates to whether a procedure and/or mechanism is currently in place to notify in a timely manner any affirmative IUU fishing determination made by your authorities in a coastal Member capacity to the Committee, as required by Article 3.3. Note that the FSA does not require Members to initiate IUU fishing investigations or make IUU fishing determinations, but affirmative IUU fishing determinations, when made, must be notified to the Committee.

As explained in the explanations related to Question 1b (see above for more details), the relevant procedure or mechanism may need to provide for cooperation between different agencies. In the context of this question, it is important to ensure that the agency responsible for the IUU fishing investigations and determinations shares the necessary information (i.e., information about any IUU fishing determination that it made) with the government agency responsible for the WTO notifications, or submit such notification to the WTO by itself if that is the existing practice, in a timely manner.

If the necessary procedure or mechanism is in place to notify any affirmative IUU fishing determinations made by your authorities in a coastal Member capacity, you may simply indicate “none” in the column “actions required to enable ongoing alignment.” In that case, there is no need to undertake any further action in the context of this question. However, if that is not the case, indicate clearly what action needs to be taken to set up this procedure or mechanism. If technical assistance is needed to set up the necessary procedure or mechanism, indicate what technical assistance or capacity building needs your authorities have and be as precise as possible.

Question 4: Does the Member have a procedure or mechanism in place to provide the Committee with the relevant updated information?

This question relates to the notification and information provision requirements under Articles 8.3 (and 3.5), 8.4, and 8.6. These provisions all require your government to make a complete initial notification or communication, and then to notify or communicate any subsequent changes “promptly.” Since these initial complete notifications must be made only once, they do not require any particular mechanism to ensure ongoing alignment. This is why



they are dealt with in the current alignment table related to notification and transparency obligations (see questions 5a, 6, and 8 in Table 8.A).

To fulfil the requirement to notify or communicate to the Committee any subsequent changes to the information provided in these initial notifications, however, procedures or mechanisms will need to be in place to enable ongoing alignment. In particular, Articles 8.3 (and 3.5), 8.4, and 8.6, require your government to:

- Promptly inform the Committee of any changes made with regard to the measures in place or taken to ensure the implementation and administration of the FSA, including the prohibitions set out in Articles 3, 4, and 5, as well as any new measures taken to implement the IUU subsidy prohibition (Articles 8.3 and 3.5).
- Promptly inform the Committee of any modifications of the Member's fisheries regime with references to its laws, regulations, and administrative procedures relevant to the FSA (Article 8.4).
- Promptly notify to the Committee any changes regarding which RFMO/As the Member is a member of and, for each relevant RFMO/A, any changes to the required information about such RFMO/A (Article 8.6).

As explained in the explanations related to Question 1b (see above for more details), the relevant procedure or mechanism may need to provide for cooperation between different agencies. In the context of this question, it is important to ensure that any relevant change regarding any element of the list above, including new measures to implement the IUU subsidy prohibition in Article 3, is promptly notified or communicated to the Committee, following the procedure used by your government for the WTO notifications. The notification may be made directly by the government agency responsible for a given measure or change, or it may be made by another agency responsible for notifications to whom the relevant information would need to be transmitted.

If the necessary procedures or mechanisms are in place to make the required notification or communication when relevant changes occur, you may simply indicate “none” in the column “actions required to enable ongoing alignment.” In that case, there is no need to take any further action in the context of this question. However, if that is not the case, indicate clearly what procedures or mechanisms would be required, as well as what actions would be needed to set these up. If technical assistance is needed for setting up the necessary procedures or mechanisms, indicate what technical assistance or capacity building needs your authorities have and be as precise as possible.

Table 8.C

Table 8.C provides a useful summary of the various notification and information provision requirements included in the FSA, including not only those in Article 8, but also in Article 3. For each obligation, it also indicates the relevant time frame to fulfil the transparency requirement. This table does not require any input. However, it can be a useful tool to track the information that needs to be notified or communicated to the WTO as part of the implementation of the FSA's transparency obligations.



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List of WTO Dispute Settlement Reports

Short title	Full case title, citation, and link
<i>Canada – Aircraft</i>	Appellate Body Report, <i>Canada – Measures affecting the export of civilian aircraft</i> , WT/DS70/AB/R, adopted 20 August 1999. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/70ABR.pdf&Open=True
<i>Canada – Renewable Energy</i>	Appellate Body Report, <i>Canada – Certain measures affecting the renewable energy generation sector</i> , WT/DS412/AB/R, adopted 24 May 2013. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/412ABR.pdf&Open=True
<i>China – Broiler Products</i>	Panel Report, <i>China – Anti-dumping and countervailing duty measures on broiler products from the United States</i> , WT/427/R, adopted 25 September 2013. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/427R.pdf&Open=True
<i>EC and certain Member States – Large Civil Aircraft</i>	Appellate Body Report, <i>European Communities and certain Member States – Measures affecting trade in large civil aircraft</i> , WT/DS316/AB/R, adopted 1 June 2011. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/316ABR.pdf&Open=True
<i>EC – Salmon (Norway)</i>	Panel Report, <i>European Communities – Anti-dumping measure on farmed salmon from Norway</i> , WT/DS337/R, adopted 15 January 2008. https://docs.wto.org/dol2fe/Pages/FE_Search/MultiDDFDocuments/65907/Q:/WT/DS/337R-00.pdf;Q:/WT/DS/337R-01.pdf/
<i>US – Anti-Dumping and Countervailing Duties (China)</i>	Appellate Body Report, <i>United States – Definitive anti-dumping and countervailing duties on certain products from China</i> , WT/DS379/AB/R, adopted 25 March 2011. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/379ABR.pdf&Open=True
<i>US – Carbon Steel (India)</i>	Appellate Body Report, <i>United States – Countervailing measures on certain hot-rolled carbon steel flat products from India</i> , WT/DS436/AB/R, adopted 19 December 2014. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/436ABR.pdf&Open=True
<i>US – Lamb</i>	Appellate Body Report, <i>United States – Safeguard measure on imports of fresh, chilled or frozen lamb from New Zealand</i> , WT/DS177/AB/R, adopted 16 May 2001. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/178ABR.pdf&Open=True



Short title	Full case title, citation, and link
<i>US – Large Civil Aircraft (2nd complaint)</i>	<p>Appellate Body Report, <i>United States – Measures affecting trade in large civil aircraft – Second complaint</i>, WT/DS353/AB/R, adopted 23 March 2012. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/353ABR.pdf&Open=True</p> <p>Panel Report, <i>United States – Measures affecting trade in large civil aircraft – Second complaint</i>, WT/DS353/R, adopted 23 March 2012. https://docs.wto.org/dol2fe/Pages/FE_Search/MultiDDFDocuments/99465/Q:/WT/DS/353R-01.pdf;Q:/WT/DS/353R-02.pdf;Q:/WT/DS/353R-03.pdf;Q:/WT/DS/353R-04.pdf;Q:/WT/DS/353R-05.pdf;Q:/WT/DS/353R-06.pdf/</p>
<i>United States – Reformulated Gasoline</i>	<p>Appellate Body Report, <i>United States – Standards for reformulated and conventional gasoline</i>, WT/DS2/AB/R, adopted 29 April 1996. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/2ABR.pdf&Open=True</p>
<i>US – Supercalendered Paper</i>	<p>Panel Report, <i>United States – Countervailing measures on supercalendered paper from Canada</i>, WT/DS505/R, adopted 5 March 2020. https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/505R.pdf&Open=True</p>



Appendix 1. Agreement on Fisheries Subsidies 17 June 2022

W T/MIN(22)/33 WT/L/1144

ARTICLE 1: SCOPE

This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.^{1,2,3}

ARTICLE 2: DEFINITIONS

For the purpose of this Agreement:

- (a) "fish" means all species of living marine resources, whether processed or not;
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;
- (e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

ARTICLE 3: SUBSIDIES CONTRIBUTING TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴

3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁵ engaged in illegal, unreported, and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

¹ For greater certainty, aquaculture and inland fisheries are excluded from the scope of this Agreement.

² For greater certainty, government-to-government payments under fisheries access agreements shall not be deemed to be subsidies within the meaning of this Agreement.

³ For greater certainty, for the purposes of this Agreement, a subsidy shall be attributable to the Member conferring it, regardless of the flag or registry of any vessel involved or the nationality of the recipient.

⁴ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁵ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.



3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following^{6,7}:

- (a) a coastal Member, for activities in areas under its jurisdiction; or
- (b) a flag State Member, for activities by vessels flying its flag; or
- (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.

3.3

- (a) An affirmative determination⁸ under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing.
- (b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:
 - (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;
 - (ii) an opportunity to exchange relevant information⁹ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
 - (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.

The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of

⁶ Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

⁷ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

⁸ Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination.

⁹ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.



application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction¹⁰ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

- 3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.3.
- 3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.
- 3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.
- 3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

- 4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.
- 4.2 For the purpose of this Article, a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.
- 4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.¹¹
- 4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the EEZ shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

ARTICLE 5: OTHER SUBSIDIES

- 5.1 No Member shall grant or maintain subsidies provided to fishing or fishing-related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

¹⁰ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

¹¹ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.



- 5.2 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.
- 5.3 A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.

ARTICLE 6: SPECIFIC PROVISIONS FOR LDC MEMBERS

A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any.

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

- 8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall
- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}: type or kind of fishing activity for which the subsidy is provided;
 - (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement:^{12,13}
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared¹⁴ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;

¹² For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilised by the SCM Committee, for example G/SCM/6/Rev.1.

¹³ For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding 0.8 per cent as per the most recent published FAO data as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

¹⁴ The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.



- (iii) fleet capacity in the fishery for which the subsidy is provided;
 - (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (v) catch data by species or group of species in the fishery for which the subsidy is provided.¹⁵
- 8.2 Each Member shall notify the Committee in writing on an annual basis of a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing.
- 8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.
- 8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. A Member may meet this obligation by providing to the Committee an up-to-date electronic link to the Member's or other appropriate official webpage that sets out this information.
- 8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member considers that a notification or information under this Article has not been provided, the Member may bring the matter to the attention of such other Member or to the Committee.
- 8.6 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.¹⁶ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.
- 8.7 Members recognize that notification of a measure does not prejudice (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.

¹⁵ For multispecies fisheries, a Member instead may provide other relevant and available catch data.

¹⁶ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.



8.8 Nothing in this Article requires the provision of confidential information.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

- 9.1 There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.
- 9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.
- 9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.
- 9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.
- 9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

ARTICLE 10: DISPUTE SETTLEMENT

- 10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.¹⁷
- 10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement¹⁸ shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

ARTICLE 11: FINAL PROVISIONS

- 11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster¹⁹ relief, provided that the subsidy is:
- (a) limited to the relief of a particular disaster;

¹⁷ Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

¹⁸ For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4, or Article 5 of this Agreement.

¹⁹ For greater certainty, this provision does not apply to economic or financial crises.



- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

11.2

- (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.
- (b) A panel established pursuant to Article 10 of this Agreement shall make no findings with respect to any claim that would require it to base its findings on any asserted territorial claims or delimitation of maritime boundaries.²⁰

11.3 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea.²¹

11.4 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

11.5 This Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.

ARTICLE 12: TERMINATION OF AGREEMENT IF COMPREHENSIVE DISCIPLINES ARE NOT ADOPTED

If comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated.

²⁰ This limitation shall also apply to an arbitrator established pursuant to Article 25 of the Dispute Settlement Understanding.

²¹ Including rules and procedures of RFMO/As.



Appendix 2. List of Least Developed Countries

The United Nations regularly publishes a list of least developed countries (LDCs).⁶⁵ Below is the November 24, 2021, iteration of this list (as accessed on September 6, 2022):

Afghanistan	Gambia	Niger
Angola	Guinea	Rwanda
Bangladesh	Guinea-Bissau	São Tomé and Príncipe
Benin	Haiti	Senegal
Bhutan	Kiribati	Sierra Leone
Burkina Faso	Lao People's Democratic Republic	Solomon Islands
Burundi	Lesotho	Somalia
Cambodia	Liberia	South Sudan
Central African Republic	Madagascar	Sudan
Chad	Malawi	Tanzania
Comoros	Mali	Timor-Leste
Democratic Republic of the Congo	Mauritania	Togo
Djibouti	Mozambique	Tuvalu
Eritrea	Myanmar	Uganda
Ethiopia	Nepal	Yemen
		Zambia

⁶⁵ United Nations Committee for Policy Development (2021).



Appendix 3. Glossary

Areas beyond national jurisdiction (ABNJ)	All areas where fisheries management is beyond the sole responsibility of one nation. In this context, ABNJ is synonym with the high seas and means all areas beyond national Exclusive Economic Zones or equivalent declared zones.
At-sea support	Activities that are taking place at sea in support of fishing operations, such as bunkering, replenishment, fisheries support activities (e.g., searching for fish, prospecting fishing grounds or transshipment).
Biologically sustainable level	Footnote 10 of the FSA defines a biologically sustainable level as “the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing-related activity is taking place, using reference points such as maximum sustainable yield (MSY), or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.”
Coastal Member	A WTO Member that has direct access to the sea or the ocean.
Committee	The WTO body in charge of administering the FSA. ⁶⁶
Exclusive economic zone (EEZ)	Defined by the FAO (n.d.) as “a zone under national jurisdiction (up to 200-nautical miles wide) declared in line with the provisions of 1982 United Nations Convention of the Law of the Sea, within which the coastal State has the right to explore and exploit, and the responsibility to conserve and manage, the living and non-living resources.” ⁶⁷
Fish	Article 2 of the FSA defines fish as “all species of living marine resources, whether processed or not.”
Fisheries management	Defined by the FAO as “the integrated process of information gathering, analysis, planning, decision-making, allocation of resources and formulation and enforcement of fishery regulations by which the fishery management authority controls the present and future behaviour of interested parties in the fisheries, in order to ensure the continued productivity of the living resources.” ⁶⁸

⁶⁶ Article 9 of the FSA provides that “There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.”

⁶⁷ FAO (n.d.), entry “EEZ.”

⁶⁸ FAO (n.d.), entry “fishery management.”



Fishing	Article 2 of the FSA defines fishing as “searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.”
Fishing capacity	Defined by the FAO thusly: “for a given resource condition, the amount of fish (or fishing effort) that can be produced over a period of time (e.g., a year) by a vessel or a fleet if fully utilised. That is, if effort and catch were not constrained by restrictive management measures.” ⁶⁹
Fishing-related activities	Article 2 of the FSA defines fishing-related activities as “any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea.”
Flag State	Defined by the FAO (n.d.) as “the State having registered a vessel under its national flag.” This means that State has exclusive legislative and enforcement authority over that ship on the high seas. ⁷⁰
High seas	See “Areas beyond national jurisdiction” above.
Income support	Any assistance provided by government to an operator or to fishers to ensure that they receive a certain minimum income, or to augment the income they are receiving from fishing.
IUU	<p>Illegal, unreported, and unregulated fishing is defined in paragraph 3 of the FAO’s International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing⁷¹ as follows. All definitions in the following section are taken directly from FAO (2001).</p> <p>“Illegal fishing refers to activities:</p> <ul style="list-style-type: none">• conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;• conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organisation but operate in contravention of the conservation and management measures adopted by that organisation and by which the States are bound, or relevant provisions of the applicable international law; or

⁶⁹ FAO, 2000, quoted in FAO, 2008.

⁷⁰ FAO (n.d.), entry “Flag State.”

⁷¹ Footnote 3 of the FSA indicates that “Illegal, unreported and unregulated (IUU) fishing” refers to activities set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing adopted by the UN Food and Agriculture Organization (FAO) in 2001.”



- in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

Unreported fishing refers to fishing activities:

- which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
- are undertaken in the area of competence of a relevant regional fisheries management organisation which have not been reported or have been misreported, in contravention of the reporting procedures of that organisation.

Unregulated fishing refers to fishing activities:

- in the area of application of a relevant regional fisheries management organisation that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or
- in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.”

Least developed countries (LDCs)

Defined by the UN Committee for Policy Development (2021) as “low-income countries confronting severe structural impediments to sustainable development. They are highly vulnerable to economic and environmental shocks and have low levels of human assets.” A country is included in the UN list of LDCs if it meets a set of three specific criteria relating to per capita income, the human asset index, and economic and environmental vulnerability.⁷² The updated list of LDCs WTO Members is available on the WTO’s website and also in Annex 3 to this Guide.

Maximum Sustainable Yield (MSY)

Defined by the FAO as “the highest theoretical equilibrium yield that can be continuously taken (on average) from a stock under existing environmental conditions without significantly affecting the reproduction process.”⁷³

⁷² The UN list of least developed countries can be consulted online on the following page: <https://www.un.org/development/desa/dpad/least-developed-country-category.html>.

⁷³ FAO (n.d.), entry “maximum sustainable yield.”



Operator	Article 2 of the FSA defines an operator as “the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.”
Overfished stock	According to the FAO (n.d.), "a stock is considered overfished when exploited beyond an explicit limit beyond which its abundance is considered ‘too low’ to ensure reproduction. In many fisheries for the term is used when biomass has been estimated to be below a limit biological reference point that is used as the signpost defining an ‘overfished condition.’” ⁷⁴
Port State	The state where the port is located in which a vessel is, or was, at a given time.
Regional Fisheries Management Organization or Arrangement (RFMO/A)	An international organisation, or another type of international cooperation arrangement, that is in charge of managing fishery resources in a particular area of the ocean and, in some cases, for particular species. There are two groups of RFMO/As: those managing highly migratory species, mainly tuna, such as the Indian Ocean Tuna Commission; and those managing fish stocks by geographical area, such as the North East Atlantic Fisheries Commission.
Special and Differential Treatment (S&D, or SDT)	“Special treatment given to developing countries, including least developed countries in WTO agreements. It could take the form of longer transitional periods to implement obligations and the assumption of lesser obligations.” ⁷⁵
Shared stocks	Footnote 14 of the FSA defines shared stocks as stocks that occur within the EEZ of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.
Stock assessment	Defined by the FAO as “the process of collecting and analysing biological and statistical information to determine the changes in the abundance of fishery stocks in response to fishing, and, to the extent possible, to predict future trends of stock abundance. Stock assessments are based on resource surveys; knowledge of the habitat requirements, life history, and behaviour of the species; the use of environmental indices to determine impacts on stocks; and catch statistics. Stock assessments are used as a basis to assess and specify the present and probable future condition of a fishery.” ⁷⁶

⁷⁴ FAO (n.d.), entry “overfished.”

⁷⁵ WTO (n.d.), entry “Special and differential treatment (S&D, SDT).”

⁷⁶ FAO (n.d.), entry “Stock assessment.”



Subsidy	A subsidy is a financial contribution, or income or price support, by a government which provides a benefit by placing the recipient in a better position than it would have been absent the subsidy. ⁷⁷
Technical assistance and capacity building	According to Cox and Norrington-Davies (2019, p. ii), “technical assistance is defined as ‘knowledge-based assistance to governments intended to shape policies and institutions, support implementation and build organisational capacity.’” Capacity building is the process of developing and strengthening the skills, instincts, abilities, processes, and resources that organizations and communities need to pursue development objectives. ⁷⁸
Vessel	Article 2 of the FSA defines a vessel as “any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing-related activities.”

⁷⁷ Based on Article 1.1 of the WTO SCM Agreement.

⁷⁸ Based on United Nations (n.d.).

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Head Office

111 Lombard Avenue, Suite 325
Winnipeg, Manitoba
Canada R3B 0T4

Tel: +1 (204) 958-7700

Website: www.iisd.org

Twitter: @IISD_news



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