



World Trade Organization Talks on Subsidies That Contribute to Overcapacity and Overfishing

What's on the table?

IISD REPORT



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1.0 Introduction

This update provides an overview of the draft text that constitutes the basis of current World Trade Organization (WTO) negotiations on fisheries subsidies, which was circulated to WTO members by the chair of the Rules Negotiating Group, Ambassador Gunnarsson of Iceland, on April 12, 2024 (WTO, 2024b). The objective of these negotiations is to complement the existing WTO Agreement on Fisheries Subsidies with additional disciplines on subsidies that contribute to overfishing and overcapacity. After providing some background on the recent history of negotiations and the current state of play, the update describes and explains succinctly the new rules that are envisaged, and it provides contextual information to help readers understand the dynamics that have led to particular provisions in the draft text. For each main component of the proposed new rules, a summary box is provided to outline the key elements of the disciplines.¹ Finally, the update concludes by highlighting a few key considerations about the draft text from a sustainable development perspective.

¹ Some parts of this update draw from previous analysis produced by IISD, in particular Tipping & Irschlinger, 2020, 2021; Irschlinger & Tipping, 2022, 2023; and IISD, 2022.



2.0 How Did We Get to Where We Are?

These negotiations aim to address a major challenge to global sustainable development. According to the Food and Agriculture Organization of the United Nations (FAO), 35% of assessed marine fish stocks are overfished (FAO, 2022), with other estimates going as high as 45% (Minderoo Foundation, 2021), and the fishing sector's productivity has significantly decreased over several decades (Rousseau et al., 2019; World Bank, 2017; World Bank & FAO, 2009). The problem is as much social as environmental; hundreds of millions of people around the world depend directly and indirectly on fishing for their livelihoods (FAO, 2022), and these livelihoods are threatened by overfishing. A key driver of overfishing is certain types of fisheries subsidies provided by governments to their fishing fleets, particularly those that support the buildup of larger fleets or directly encourage greater fishing pressure (Martini & Innes, 2018; Organisation for Economic Co-operation and Development, 2022). Subsidies often artificially reduce the costs of fishing or increase revenues, incentivizing fishers to go to sea when doing so would not be profitable without government support. The most recent existing global estimates indicate that, in 2018, global fisheries subsidies amounted to USD 35.4 billion, including USD 22.2 billion in forms that tend to generate more fishing capacity (Sumaila et al., 2019).

To help remedy this situation, WTO members agreed to develop new rules to discipline fisheries subsidies in 2001, at the 4th Ministerial Conference in Doha. After more than two decades of stop-and-go negotiations, in 2022, they finally managed to agree on a new set of binding rules to curb the harmful subsidies that governments provide to their fishing sectors. The WTO Agreement on Fisheries Subsidies adopted in 2022 (“the 2022 Agreement”) at the organization’s 12th Ministerial Conference (MC12) in Geneva was a landmark achievement. It was the first WTO agreement to pursue a sustainability objective and only the second multilateral agreement in the WTO’s history. It also responded to a UN mandate enshrined in Target 14.6 of the UN Sustainable Development Goals (SDGs). The 2022 Agreement prohibits subsidies in the situations where they are the most unequivocally dangerous: when provided to (1) illegal, unreported, and unregulated fishing activities; (2) the fishing of fish stocks that are clearly assessed as overfished, with no measure in place to rebuild them; and (3) fishing activities in unregulated high-seas fisheries. The treaty will enter into force when two thirds of WTO members (i.e., 110) will have formally accepted it.²

Importantly, however, the June 2022 agreement did not cover all of the rules members sought. Its rules are fundamentally important from a sustainability perspective, but they are also limited in scope, as they apply to a set of specific situations that are particularly alarming. At MC12, WTO members had also hoped to conclude broader disciplines prohibiting subsidies that contribute to overcapacity and overfishing more generally. The objective of these rules was to prevent subsidization from leading to overfishing in the first place, but WTO members failed to reach consensus on these more comprehensive disciplines. They committed to continuing negotiations after MC12 “with a view to making recommendations

² At the time of writing, 47 instruments of acceptance had been deposited with the WTO, covering 73 members.



to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies” (WTO, 2022b).

Talks on the topic resumed in 2023, with members holding eight “fish weeks” of dedicated meetings in Geneva between March and December. Members began by reconsidering the approaches to the rules they had not managed to reach consensus on in 2022 to test whether alternative approaches would bring them closer to convergence. As the discussions evolved, the chair of negotiations, Ambassador Gunnarsson of Iceland, tabled draft disciplines (WTO, 2023a) as a starting point for text-based negotiations in September 2023. This initiated a process of gradual convergence between members on most of the key elements in the rules, which was reflected in a draft consolidated chair text issued at the end of the year (WTO, 2023b). Members then engaged in an intensive month of negotiations ahead of MC13, from mid-January to mid-February 2024, to continue narrowing gaps between positions and find further convergence on several outstanding issues. The progress achieved was captured in a draft text for additional provisions on fisheries subsidies issued on February 16, 2024, just before MC13 (WTO, 2024a).

When ministers landed in Abu Dhabi for MC13, several important questions were still up for discussion. However, hopes were high that the remaining issues could be ironed out during the conference. Intense discussions were held during the first 3 days of the meeting, in particular to accommodate the particular concerns of Pacific Island WTO members regarding the environmental credibility of the rules. Other members also worked bilaterally to find common ground on specific issues where they held different positions. On the basis of this work, the facilitator of MC13 talks on fisheries subsidies, Permanent Secretary of State Martin Eyjólfsson of Iceland, circulated to members an informal revision of the text in the early hours of Friday, March 1, 2024. This text then formed the basis of further engagement between various members to try to find compromises on the last outstanding issues. These efforts led to unprecedented levels of convergence on virtually all issues on the table, and members came extremely close to consensus, but the additional disciplines could not be agreed in the end.

At the meeting of the WTO General Council following the Ministerial Conference, many delegations emphasized how close members were to landing a deal in Abu Dhabi and expressed strong support for continuing work toward concluding negotiations. As a first step in that direction, the Chair of negotiations decided to issue a formal version of the MC13 1 March morning text (the “draft text”; WTO, 2024b), as a way to capture the progress made at MC13 and provide delegations with a document that can be easily used as the basis for further work moving forward. This draft text is the focus of this update. When it was circulated, it was accompanied by an explanatory note, in which the chair reported on the negotiations held in MC13 and provided explanations on why certain changes to the text were made during the conference (WTO, 2024c). The note also mentions the work undertaken by a diverse group of members to find a landing zone during the last hours of the conference and highlights the changes to the text that this group was suggesting. This update also mentions several of these suggested changes.



3.0 Understanding the Draft Text: What's on the table?

The current WTO negotiations aim to establish “additional disciplines” on subsidies that contribute to overfishing and overcapacity that would complement the existing Agreement on Fisheries Subsidies. The framework provisions included in the existing Agreement—scope, definitions, particular provisions for LDCs, technical assistance and capacity building, notification and transparency, institutional arrangement, dispute settlement, and final provisions—would apply in the same way to the additional disciplines (Article E.2). This means that the additional disciplines under negotiation should be read and interpreted in the context of the existing framework established by the 2022 Agreement. This means, for example, that the additional disciplines would apply only to subsidies as defined in Article 1 of the WTO Agreement on Subsidies and Countervailing Measures that are specific within the meaning of Article 2 of the same agreement and provided to marine wild capture fishing and fishing-related activities at sea.³

Prohibition of Subsidies That Contribute to Overcapacity and Overfishing

The negotiation's mandate explicitly refers to the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing. How exactly new WTO rules should respond to that mandate—beyond the targeted prohibitions included in the 2022 Agreement—has been the subject of intense discussion among members, with different approaches being tabled and considered over the course of several years. The draft text reflects members' gradual convergence on a “hybrid” approach that borrows and balances elements from several proposals made by different members and groups of members. The main rule included in the text is a broad prohibition of subsidies that contribute to overfishing and overcapacity, including a list of particular types of subsidies, which is accompanied by two types of exemptions: (a) an exemption covering situations where the subsidizing member can show that measures are in place to keep stocks healthy, and (b) a series of temporary and permanent exemptions for developing country members or groups of developing country members as special and differential treatment (SDT).

A similar “hybrid” approach was also the basis of discussions in the lead-up to MC12 (WTO, 2022a), but members could not agree on the specific parameters of how the exceptions would work, in particular because many members were concerned that the exceptions proposed gave too much flexibility to large subsidizers. After MC12, members went back to the drawing board and considered a range of different approaches to this main prohibition but gradually came back again to the idea of a general subsidy prohibition, accompanied by a management-based exemption and SDT exemptions. However, several important changes and adjustments were made to the suggested disciplines the second time around, in particular with a view to

³ For more information on the WTO Agreement on Fisheries Subsidies and its disciplines, see Irschlinger and Tipping, 2023.



accommodating some members' concerns that the rules needed to be stronger for big players. The key elements of this redesigned rule are considered in more detail below.

Prohibition

Article A of the draft text starts with a simple and broad prohibition of all subsidies “that contribute to overcapacity and overfishing” and immediately specifies that such subsidies include those on an illustrative list of particular subsidy types—which are generally considered the most likely to incentivize overfishing and overcapacity (Article A.1). The list includes subsidies related to vessel construction, acquisition, maintenance, and modernization; the purchase and maintenance of machines and fishing equipment; the purchase of fuel, ice, and bait; the costs of personnel, social charges, or insurance; income support except during seasonal closures; price support of fish caught; at-sea support; and support to cover operating losses. Listed subsidy types are deemed to contribute to overfishing and overcapacity; they are thus presumptively prohibited. Importantly, though, the list is not an exhaustive one, which means that other subsidies could also be prohibited under that rule if they are shown to contribute to excessive fishing effort or fishing capacity. This broad prohibition is then balanced by two key types of flexibility, which allow the continuation of subsidies to which the prohibition would apply otherwise.

Management-Based Exemption

In a separate subparagraph (Article A.1.1.), the text includes an important qualifier to the main prohibition. This flexibility—the key “hybrid” element of the design—would allow the provision of subsidies that would otherwise be prohibited if the subsidizing member can demonstrate that “measures are implemented to maintain” the relevant stocks at a biologically sustainable level. A biologically sustainable level can be determined by a coastal member (based on maximum sustainable yield or other reference points) or by a relevant regional fisheries management organization or arrangement (RFMO/A). This demonstration must be done through notifications, and the text specifies that the information provided must enable other members to effectively evaluate whether the conditions for benefiting from the exemption are met. In particular, these notifications must include the following information: (a) relevant conservation and management measures; (b) status of fish stocks, reference points used to determine such status, and whether these stocks are shared with other members or managed by an RFMO/A; (c) catch data; and (d) fleet capacity in the relevant fisheries.

Importantly, the requirements that must be met to benefit from this exemption are not the same for all members, which is a key difference from the text that was considered ahead of and at MC12. This difference responds to a call by many members to have stricter disciplines for members with larger-scale and more heavily subsidized fishing sectors. Following this approach, members are essentially divided into two tiers as follows, with stricter requirements applied to members in the first tier:



- **First tier:** Developed members and developing country members that are (1) amongst the 10 largest providers of fisheries subsidies;⁴ (2) significantly engaged in fishing and fishing-related activities far from their territorial sea;⁵ or (3) have committed not to use SDT provisions.
- **Second tier:** Developing members that are not included in the first tier and that are not completely exempted from the rule under SDT provisions (see section below).

For developing country members included in the second tier, the demonstration that appropriate sustainability measures are in place would need to be made in their regular subsidy notifications (Article A.1.1 (b)), which are due every 2 years. The requirements would, however, be stricter for developed members and the (likely very few) developing members included in the top tier in two regards (Article A.1.1(a)). First, every time a new subsidy program comes into effect, they would need to make their demonstration in a notification “as soon as practicable,” and in any case, within a period of 6 months. Second, and perhaps most importantly, the text specifies that the demonstration would need to include “an explanation of how those measures ensure, or can reasonably be expected to ensure,” that stocks are maintained at a sustainable level. For members included in the top tier, the demonstration that would be required to use the flexibility would thus need to be both quicker and more detailed and more extensive.

In addition, the text provides that all members have the possibility to seek clarification from other members regarding the demonstrations made and information provided in their notifications. When a member chooses to do so, the subsidizing member then has an obligation to provide a comprehensive written answer as quickly as possible (Article A.1.2). Further information provided on request may thus also be part of the demonstration required to use the management-based exemption, which means that the demonstration process does not stop when a notification is made.

The management-based exemption is the issue on which the text has evolved the most since MC12. After 4 years of heated debate since the idea was first included in a version of the negotiating text (WTO, 2020),⁶ it now appears to be the approach that the majority of the membership can live with, even though some continue to argue it is not sufficiently ambitious. Large subsidizers argue that enabling some subsidies to continue if management is present is the only way to make a general prohibition implementable in practice. Other members have pushed for a tight exemption to avoid the risk that WTO members, in particular those with the largest fleets and highest subsidy levels, continue providing subsidies that jeopardize the sustainable exploitation of fish resources. After MC12, calls for tightening the conditions for big players to use this flexibility continued, and even intensified, which led to the introduction of the two-tiered approach described above, as well as other adjustments. While the exemption included in the draft text is not the most ambitious option from a sustainability perspective,⁷

⁴ The inclusion of members in the first tier as a result of this criterion would be based on an aggregate level of fisheries subsidies that this member would have to notify to the Committee on Fisheries Subsidies.

⁵ To be more precise, the criterion applies to members fishing in any area farther than one FAO Major Fishing Area beyond the one(s) adjacent to the member's territorial sea, as per Article A.1.1(b)(ii).

⁶ Also see: <https://www.iisd.org/events/fisheries-subsidies-contribute-overcapacity-and-overfishing-review-science-and-key-decisions>

⁷ Option with “which”...



it is the strictest version on which convergence could be achieved after years of talks. It now provides that only effective, or at least credible, management measures justify the continuation of subsidies otherwise captured by the prohibition and requires developed members, large subsidizers, and members that fish in waters far from their own to comply with stricter requirements when demonstrating the management measures they have in place.

Special and Differential Treatment

The negotiations' mandate, as specified in 2005 at the WTO's Hong Kong ministerial conference (and as reinforced in SDG Target 14.6), explicitly recognizes that "appropriate and effective special and differential treatment [...] 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" (WTO, 2005). SDT provisions have been at the very centre of WTO discussions, as they constitute an essential part of the balance of rights and obligations between members that would be enshrined in new rules. Demands for SDT from developing country members have been more substantial in the context of these additional disciplines compared to the SDT provisions included in the 2022 Agreement, which is due to the broader and more direct nature of the rules currently under discussion. Several developing country delegations have highlighted the need not only to protect the livelihoods and employment of poor fishing communities but also to develop their fishing fleets and ensure a fairer distribution of shared resources among fishing nations. Meanwhile, other members have argued that broad exemptions from the rules could undermine the effectiveness of additional disciplines from a sustainability perspective, underlining that these disciplines have been designed to curb the use of subsidies only in situations where they are harmful.

Despite strong initial divergences in this area, members have managed to achieve convergence on the structure and most of the details of a set of tailored SDT provisions for the new rules. These flexibilities are very similar to those that were already on the table at MC12 in June 2022, but further refinements were made ahead of and at MC13, which appear to have brought members close to consensus. However, a few particular points still need to be sorted out.

The approach reflected in Article B of the text includes four different exemptions from the main prohibition of subsidies that contribute to overcapacity and overfishing. To note, these exemptions would operate to exempt developing country members from the prohibition and its in-built management exception; in practice, the SDT provisions exempt developing country members from the obligation to have fisheries management measures in place if they provide subsidies that contribute to overcapacity and overfishing. The exemptions proposed in the text are:

1. A complete and permanent exemption for least developed country (LDC) members' subsidies (Article B.1):

This exemption would apply to LDCs until they graduate out of the LDC category, as well as for a period of time once they have graduated. The exact duration of this period is one of the few outstanding questions highlighted by the chair of negotiations in the draft text. At MC13, some members involved in work to craft compromises on the last outstanding issues



had suggested that 3 years may constitute an acceptable transition period before former LDCs would be expected to comply with the more general rules and flexibilities applicable to developing country members. Other members suggested a longer transition period.

2. A complete and permanent exemption for small developing fishing nations' subsidies (Article B.2):

Developing country members accounting for less than 0.8% of global marine capture production would benefit from this so-called “de minimis” exemption. Any of these members that would later move above the 0.8% line for 3 consecutive years would be expected to comply with the more general rules and flexibilities applicable to developing country members.

3. A transitional exemption for developing country members' subsidies to large-scale fishing (Article B.3):

This transition period includes two elements. First, subsidies provided by developing country members to fishing activities, therefore including large-scale fishing, taking place in their Exclusive Economic Zone (EEZ) or under RFMO/As would be temporarily exempted from the prohibition and so would not need to be accompanied by management measures. This temporary exemption is mostly relevant for large-scale fishing, as subsidies to small-scale fishing benefit from a separate, permanent exemption (see below.) The duration of that period is still undefined in the draft text and has been highlighted by the chair as a question to resolve. At MC13, the group of members working on finding compromises had suggested a duration of 8 years for this period. Second, once this transition period is over, developing country members would benefit from an additional 2-year grace period (also called a “peace clause”) if they continued to provide subsidies to large-scale fishing that were inconsistent with the main prohibition. In other words, while the prohibition would then apply to developing country members' large-scale fishing, other WTO members would not be able to enforce this rule against them through dispute settlement for that period of time. Each developing country member would also have the possibility to ask the WTO Committee administering the agreement for a maximum of two 2-year extensions of that grace period.

4. A permanent exemption for developing country members' subsidies to small-scale and artisanal fishing (Article B.4):

This exemption is a central priority for many developing country members, who want to ensure that they can continue to provide otherwise prohibited subsidies (to fuel or to vessel construction, for example) to vulnerable communities even when there is no or little fisheries management in place. This exemption was the subject of intense discussion in the lead-up to and at MC13, and the discussion led to several refinements of the rule. The current text would exempt from the main prohibition subsidies to “small-scale and artisanal fishing or fishing-related activities that are primarily low-income, resource-poor or livelihood in nature.” The fishing activities covered by the exemption would be operationally defined by the subsidizing member. Members using this flexibility would have an obligation to notify their national definition of this category of fisheries, as well as the subsidies provided under this provision.

To ensure that this wide and permanent exemption is not used to continue subsidizing large-scale fishing (which should instead be covered by the transition period and gradually subject to fisheries management if subsidized), a footnote clarifies that this flexibility should not apply to subsidies to “significantly commercial fishing or fishing-related activities.” At MC13,



some developing country members expressed concerns about this language, and the group of members working on identifying compromises suggested replacing “significantly commercial” with “industrialized.” The balance to be struck here is to find language that leaves sufficient space for developing countries to subsidize truly small-scale fishing by vulnerable communities but not so much space that this exemption becomes a loophole that undermines the effectiveness of the rule. It is important to get this balance right, both to protect the viability of small-scale fisheries (whose main threat is often large-scale fishers fishing in the same areas) and to ensure the credibility of the agreement overall.

Importantly, the draft text also includes a specific provision that would encourage developing country members with adequate fisheries management capacity to commit not to use SDT exemptions. A footnote specifies that such commitments would include statements made before conclusion of the additional disciplines. Some members have insisted that for the additional disciplines to be credible, the main prohibition would need to apply to all the largest subsidizers, including those that are developing country members. As a result of this mechanism, the rules could apply fully to all major fishing nations and subsidizers, including developing country members among them, provided that they make such a voluntary commitment not to use SDT provisions. A similar mechanism was used in the ministerial decision to waive certain obligations related to intellectual property for developing country members in the context of the COVID-19 pandemic (WTO, 2022c). It encouraged developing country members that had capacity to manufacture COVID-19 vaccines to commit not to use that waiver, which China had done.

Versions of the negotiating text discussed until February 2024 also included a soft sustainability obligation for developing members using these flexibilities, requiring them to undertake efforts to ensure that their subsidies do not contribute to overcapacity and overfishing. This soft obligation was removed due to strong resistance from several developing members and on the understanding that Article D.2 of the draft text includes a similar, more general—but also somewhat softer—obligation to consider the possible consequence on overcapacity or overfishing any time a member provides a subsidy.

Overall, SDT provisions appear to be very close to being fully consolidated, but a few last questions are still open:

- the duration of the two transition periods
 - the transition period after which graduated LDCs begin to apply the rules for developing members
 - the transition period after which developing country members’ subsidies to large-scale fishing need to be accompanied by fisheries management if they are to continue
- the exact wording of the footnote to the exemption of subsidies to artisanal and small-scale fishing, which aims to clarify what type of activities cannot benefit from this flexibility.



As they address these questions, members will need to strike a balance that both provides for what they consider to be appropriate and effective SDT and preserves the effectiveness of the new disciplines.

Table 1. Indicative data points on the coverage of particular provisions

		% of global catch (tonnage)	% of global effort (kW day)	% of WTO-relevant subsidies*
Development status	Developed members	28%	18%	38%
	Developing members	62%	75%	60%
	< 0.8% of global catch	9%	Below 20%	5%
	LDC members	7%	5%	1.7%
Maritime areas	Domestic EEZ	82%	76%	71%
	Developed members	21%	14%	Not available
	Developing members	53%	61%	Not available
	LDC members	6%		
	Foreign EEZ	15%	19%	24%
	High seas	2.5%	5%	5%
Sector	Industrial	72%	57%	89%
	Artisanal	27%	43%	11%
	Developed members	3.5%	8%	6%
	Developing members	18%	34%	5%
	LDC members	4.4%		0.9%

Source: This table was compiled using data extracted from presentations made by Deng Palomares (catch, based on Sea Around Us, n.d.), Yannick Rousseau (effort, based on his own dataset), and Anna Schuhbauer (subsidies, based on Sumaila et al., 2019, and Schuhbauer et al., 2020) at a virtual workshop organized by IISD on March 3, 2023; as well as some additions made by Daniel Skerritt based on data used for Skerritt et al., 2023 (allocation of subsidies to maritime areas). Presentations from the workshop, as well as a recording, are available at <https://rb.gy/jm57sv>. The shares in the row “< 0.8% of global catch” have been added by the author based on the same data sources (for effort and subsidies), as well as FAO, n.d. for catch.

Note: The highlighted cells show the estimated scope of the permanent exemptions included in SDT provisions, which apply to LDC members, small fishing nations, and developing members’ artisanal fishing.

* The use of “WTO-relevant subsidies” here means that the subsidy categories from the original dataset (Sumaila et al. 2019) that in IISD’s view fell most obviously outside the scope of the Agreement on Fisheries Subsidies—and, as a result, of these additional disciplines – were removed from the data for the purpose of this exercise.



Table 1 provides an overview of the estimated shares of global fishing catch, fishing effort, and fisheries subsidies that can be attributed to (1) members by development status, (2) different types of maritime areas (domestic EEZ, foreign EEZ, and high seas), and (3) different scales of fishing (artisanal and industrial). This data sheds some light on the scope of certain provisions in the draft text, including SDT exemptions, understood as the proportion of global fishing catch, fishing effort, or fisheries subsidies that these provisions would exempt from the application of the prohibition. The percentages presented in the table for developing country members include members with large industrial fishing fleets, such as China, Chinese Taipei, and South Korea. These shares would decrease significantly if these members were excluded.

The table shows that while the temporary exemption for developing country members' subsidies to activities in their EEZ or under an RFMO/A would cover a large share of global fishing catch, effort, and likely subsidies, the scale of the permanent exemptions is more limited (see highlighted cells in the table). LDC members represent 7% of global catch and 1.7% of the subsidies that could be covered by the main prohibition. These numbers are slightly higher for non-LDC developing members that represent less than 0.8% of global catch, with 9% of global catch and 5% of global subsidies. Finally, artisanal fleets from non-LDC developing members account for 18% of global catch and 5% of global subsidies.



Summary box: Prohibition of subsidies that contribute to overcapacity and overfishing

Prohibition

Members agree not to provide subsidies that contribute to overcapacity or overfishing, which include subsidies for:

- vessel construction, acquisition, modernization, renovation, or upgrading
- purchase of machines and equipment
- purchase of fuel, ice, or bait
- costs of personnel, social charges, or insurance
- income support (except for seasonal closures of fishing grounds)
- price support of fish caught
- at-sea support
- coverage for operating losses

Fisheries management-related exemption

The prohibition does not apply if the subsidizing member demonstrates that measures are implemented to maintain the relevant fish stock(s) at a biologically sustainable level.

Developed members, as well as developing members that are among the top 10 subsidizers, engage in significant fishing far from their waters, or have committed not to use SDT provisions, would need to make a quicker and more extensive demonstration of the measures implemented.

SDT

The prohibition does not apply to subsidies provided by:

- LDCs or recently graduated LDCs
- developing country members that account for less than 0.8% of global marine capture
- developing country members for fishing and fishing-related activities in their EEZ or under a relevant RFMO/A for a maximum of [X] years after the entry into force of the disciplines, with an additional grace period of 2 years that can be renewed two times
- developing country members for small-scale and artisanal fishing or fishing-related activities that are primarily low-income, resource-poor, or livelihood in nature

Developing country members with adequate fisheries management capacity are encouraged to commit not to use SDT exemptions.

Note: As a result of Article 11.1 of the 2022 Agreement, subsidies for disaster relief would also not be affected by this prohibition.



Obligation on Subsidies Targeted at Fishing in Areas Beyond the Subsidizer's Jurisdiction

In addition to the main prohibition of subsidies contributing to overfishing and overcapacity, the draft text also includes a rule that applies specifically to subsidies targeted at (the exact language is “contingent upon, or tied to”) fishing and fishing-related activities beyond the subsidizing member's EEZ. This rule covers those subsidy programs specifically designed for distant-water fishing (DWF) or which, in practice, provide the bulk of their benefit to DWF.

Many members have insisted on the importance of disciplining these subsidies strictly, arguing that they should be subject to an unconditional prohibition. They consider that these programs are particularly risky from a sustainability perspective, in particular because they provide clear incentives for fishing fleets to apply greater fishing pressure in areas beyond the subsidizing member's waters, where such member's control over whether fisheries are effectively managed is limited and where the consequences of overfishing for other members' fleets are often particularly significant. Such a strong discipline, however, has also been opposed by several members engaged in DWF, who are of the view that such subsidies are not more harmful than others and should continue to be allowed if fisheries management measures are in place. These divergences of views led to continued disagreement over a proposed prohibition of these subsidies—with possible exemptions—until MC13, where a possible option for compromise was crafted following further intensive discussions.

This proposed compromise is reflected in Article A.2 of the draft text. It moves away from the idea of a strict, unconditional prohibition to introduce a somewhat softer but more closely monitored rule. The suggested discipline starts by requiring members to refrain “to the greatest extent possible” from providing subsidies that are contingent upon or tied to fishing and fishing-related activities beyond the subsidizing member's EEZ, unless particular criteria are met (Article A.2(a)). These criteria are very similar to those that would need to be met to benefit from the sustainability-based exemption in Article A.1.1, but the text specifies that for these subsidies, the stricter demonstration requirement that is applicable to members in the first tier in A.1.1—quicker and more extensive demonstration that measures are in place to keep stocks at a sustainable level—must be fulfilled. The second paragraph of the rule then provides that the main prohibition of subsidies that contribute to overcapacity and overfishing applies to DWF-contingent subsidies unless the same criteria are fulfilled (Article A.2(b)).⁸ In other words, the suggested solution to the disagreement over whether the subsidies could continue to be provided if management measures are in place in the relevant fishery is that they could, but this is balanced by an additional scrutiny of the impact of those subsidies.

The third paragraph of this discipline establishes a dedicated process for monitoring DWF-contingent subsidies and the application of this rule. The Committee would assess the

⁸ At face value, the drafting of these provisions appears to leave the relationship between these two paragraphs slightly unclear. While the first one includes an obligation to “refrain, to the greatest extent possible,” from providing DWF-contingent subsidies unless specific criteria are met, the second paragraph prohibits these subsidies unless the same criteria are met. However, it seems that the intention of members was to have an obligation to refrain from providing such subsidies that would apply in all situations, and then a clarification that such subsidies are simply prohibited if specific sustainability-related criteria are not met (WTO, 2024c). This would benefit from a clarification.



information about these subsidies received through members' notifications, examine how the total amount of such subsidy evolves, and examine the impact of these programs on small island developing states (SIDS) and LDC members. The discipline and the subsidies it covers would thus be subject to particular scrutiny.

Summary box: Obligation on subsidies targeted at fishing beyond the subsidizer's jurisdiction

Obligation

Members agree to refrain, to the greatest extent possible, from providing subsidies that are contingent upon or tied to fishing and fishing-related activities beyond their EEZ, unless particular criteria are met—i.e., a quick and detailed demonstration that effective, or at least credible, measures are in place to keep relevant fish stocks at a sustainable level. Members also agree that these subsidies are prohibited if the same criteria are not met.

Monitoring process

A dedicated process is established to monitor these subsidies, their evolution, and their impacts on SIDS and LDC members.

Notification and Transparency

Beyond the substantive disciplines described above, which already comprise elements related to transparency, the draft text also includes several additional provisions on transparency and notification. These are included in Article C.⁹ It is important to note that these provisions complement the broader transparency obligations that are already included in the 2022 Agreement.¹⁰

The draft text includes obligations for members to notify the Committee, each year, of: (a) vessels and operators for which there is information that reasonably indicates the use of forced labour; (b) a list of fisheries access agreements or arrangements, including their title and parties and, if possible, their full text; and (c) to the extent possible, the fuel subsidies they provide that are not “specific” within the meaning of Article 2 of the WTO Agreement on Subsidies and Countervailing Measures.¹¹ The first and last of these three elements are highlighted in yellow in the draft text, indicating that a solution still needs to be found due to members' divergent views. At MC13, the group of members working on crafting compromises on the last outstanding issues had suggested that the last element (on non-specific fuel subsidies) could be deleted, as well as the part regarding the full text of access agreements

⁹ Importantly, a specific provision in Article C indicates that “Nothing in these Additional Provisions requires the provision of confidential information, including confidential business information” (Article C.7).

¹⁰ For more details, see the “Notification and Transparency” section in Irschlinger & Tipping, 2023.

¹¹ As a reminder, the Agreement on Fisheries Subsidies, and as a consequence, these additional disciplines, apply only to subsidies that are “specific” within the meaning of Article 2 of the SCM Agreement.



in the second element. The first element (on forced labour) was, and still is, expected to be considered again before an eventual final adoption of these additional provisions, once one specific developing country member would have voluntarily committed not to use SDT provisions under this new set of rules, a commitment that would be captured in the final text following the process in Article B.5 explained above.

The draft text's provisions on transparency also include two paragraphs (Articles C.4 and C.5) that would allow the determination of each member's aggregate level of fisheries subsidies and the establishment of a ranking on that basis. This would enable the identification of the members included in the first tier in the context of the management-based exemption to the main prohibition but would also provide useful information to monitor the evolution of members' overall levels of subsidization in the context of these subsidy rules. Each member would need to notify the required information within the first 120 days after entry into force of these additional provisions and then in its regular subsidy notifications. The WTO Secretariat would then compile a ranking on that basis and could request clarifications from members when doing so.

Finally, a separate paragraph establishes a link between transparency and the use of some of the exemptions included in the additional provisions (Article C.6). It specifies that members would be able to use the management-based exemption to the main prohibition, as well as the exemption for developing country members' subsidies to small-scale and artisanal fishing, only for subsidies that have been notified. A previous version of this provision would have applied to other SDT provisions as well, but it was narrowed down in response to concerns from several developing country members that it could prevent them from accessing these other exemptions (those found in Articles B.2 and B.3). The group of members working on finding compromises in the last hours of MC13 had suggested removing that provision entirely, indicating that some developing countries likely still had concerns about it.

Summary box: Transparency and notification

Each year, members would notify the WTO Fisheries Subsidies Committee of:

- any vessels and operators that appeared to be using forced labour
- a list of their fisheries access agreements or arrangements (incl. title, parties and, if possible, full text)
- to the extent possible, any non-specific fuel subsidies they provide.

Members would also need to notify to the Committee information allowing a determination of their aggregate levels of fisheries subsidies, first within 4 months after entry into force of the disciplines and then in their regular subsidy notifications.

Members could use the management-based exemption to the main prohibition (Article A.1.1.) as well as the exemption for developing country members' subsidies to small-scale and artisanal fishing (Article B.4) only for subsidies that have been notified.

Note: Members still have divergent views on several of these provisions, which are thus likely to be amended or deleted before an eventual conclusion of negotiations.



Other Provisions

On top of the individual obligations it would establish for members, the draft text also includes two other more general provisions that are essential to understanding the overall nature and the implications of this package of additional disciplines.

Review Clause

At MC13, Pacific Island WTO members raised important concerns about the overall balance of ambition in the text and called for explicit commitments to a standstill and reduction in subsidies to be built into the disciplines. After many intense hours of negotiation, the compromise found was to build in a uniquely strong review clause, under which the effectiveness of the rules would be assessed, and changes to the rules, including to mandate reductions of subsidies, could be recommended.

Under Article D.1, the draft text establishes a dedicated process for reviewing the operation of these additional disciplines, which would have to be undertaken by members within 5 years of entry into force of the disciplines. The provision is quite detailed. It specifies that the review would need to consider the overall impact of the rules on overcapacity and overfishing, DWF and the global level of subsidies that are targeted at these activities, the global level of fisheries subsidies more generally, and the economic benefits that SIDS and LDC members are able to derive from sustainable fishing. The review would identify the possible changes that would be required to make rules more effective, and if the overall levels of subsidies or DWF-contingent subsidies have increased, the provision specifies that such changes would need to include commitments to limit subsidies quantitatively or reduce them unless other changes are “more appropriate.” Importantly, the outcome of this review, including any recommended modification to strengthen the rules, would then be considered by the next WTO ministerial conference.

Relationship With the 2022 Agreement

Finally, the draft text provides that the additional provisions that it establishes and the existing 2022 Agreement together constitute a complete agreement (Article E.1). This is important because when WTO members concluded the 2022 Agreement at MC12, they also committed to continue negotiations with a view to achieving a “comprehensive agreement” on fisheries subsidies. Through this provision, the draft text thus clarifies that if the additional disciplines are concluded, members will have delivered on this mandate.



4.0 Key Considerations From a Sustainable Development Perspective

As members consider their next steps in these negotiations and how they could be brought to successful conclusion, a crucial question is what the new rules mean from a sustainable development perspective. It is impossible to precisely assess the possible impact of the disciplines, in particular because such impact will depend on the way WTO members implement them in practice, but there are several key considerations that are important to keep in mind.

The overall objective against which to judge these additional provisions is the extent to which they will, or could, shape subsidy patterns so that they contribute to more sustainable fishing, therefore protecting both marine ecosystems and the communities that depend on fishing for nutrition, jobs, and livelihoods. The provisions are broader than those agreed in the context of the Agreement on Fisheries Subsidies adopted in 2022, and so is their potential impact. While the 2022 Agreement establishes crucial rules that ban subsidies in specific situations (subsidies to illegal fishing, subsidies to the fishing of overfished stocks, and subsidies to unregulated high-seas fishing), the proposed additional rules go further and aim to prevent subsidies from contributing to overfishing in the first place. As such, the conclusion of these negotiations is extremely important.

Precisely because of the breadth of the impact that these rules could have, negotiations have been very intense and complex, as members strived to find convergence around rules and flexibilities that would accommodate their many different interests and sensitivities. There were balances to be struck at many levels: between current fishing nations and other members that have plans to grow their fleets; between members with good fisheries management and others that still need to build their systems; between small-scale fishing and large-scale fishing; and, perhaps most importantly, between the immediate, short-term needs of fishing communities—and the obvious implications this can have in domestic politics—and the long-term imperative to move toward more sustainable fishing.

Against this backdrop, it comes as no surprise that the draft text is not any member's ideal set of rules. Each provision reflects one or more of the balances listed above. Several members or groups of members have long argued that the requirements for members to continue providing subsidies under the management-based exemption should be as strict as possible, prioritizing a faster move to more sustainable fishing. They called for the text to provide explicitly that only management measures whose effectiveness has been demonstrated could justify the continuation of otherwise prohibited subsidies. Such language would, indeed, have been stronger, as it would have tried to ensure that no subsidy would ever contribute to unsustainable fishing. However, other members argued for a more flexible approach, asserting that the effectiveness of fisheries management is difficult to prove, even for those with well-developed systems.

Developing country members argued throughout for flexibility for their own subsidies, on the grounds that they had few ways of supporting the immediate needs of small-scale fishers or of



growing their own fleets other than through subsidies and that fisheries management was both difficult and expensive to put in place. Other members, in turn, expressed concerns about the width of SDT exemptions for developing country members, arguing that broad flexibilities, in particular if enjoyed by large developing country fishing nations, risked undermining the sustainability objective of the rules.

These dynamics make it clear that the suggested new rules are the result of painstaking work to find compromises between governments with very divergent initial positions. And after years of hard negotiating work, the draft text seems to reflect the best set of disciplines on which members have managed to find convergence.

As drafted, they would prohibit the most risky types of subsidies when no credible fisheries management measures are in place; in essence, ensuring that governments providing risky subsidies always paired those subsidies with management of fisheries resources. And while the temporary exemption from that rule for developing country members' subsidies to large-scale fleets would apply to a large share of global fishing catch and subsidies, it would do so only for a specific period of time. Eventually, a large majority of subsidies to large-scale fishing would need to be paired with management. The scale of the permanent exemptions, for subsidies by very small fishing nations and for subsidies to small-scale fishing in developing countries, is much smaller. At a global institutional level, the disciplines would subject fisheries subsidies to scrutiny that currently does not exist, putting the issue of fisheries subsidies and their sustainability explicitly on the ongoing international agenda in a WTO committee. The SDT provisions also reflect a novel approach to what is often a contentious issue at the WTO: one that considers both the development status of a member and—crucially—the shape and scale of subsidies provided and their contribution to the problem that the rules are trying to solve.

Most importantly, the value of the disciplines lies in their potential to change the behaviour of, and the public's expectations of, policy-makers across the globe as they define the support that their government provides to the fishing sector. Fisheries subsidy policies would be expected to align with sustainable development objectives, a principle that would be enshrined in a multilateral, binding set of rules for the first time. The disciplines are not perfect, but they represent a lot of value in sustainable development terms. In the current geopolitical environment, the political space to conclude the rules is narrowing. Given the amount of negotiating effort it has taken to get this far, leaving this value on the table to try again for a "better" outcome would be a risky bet.



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