

中譯本

部長會議

第十二屆

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漁業補貼協定

2022 年 6 月 17 日部長決議

部長會議

有鑒於馬拉喀什設立世界貿易組織協定(簡稱世界貿易組織協定)第 10 條第 1 項；

鑒於 2017 年在布宜諾斯艾利斯舉行的第十一屆世界貿易組織部長會議對會員之授權，下屆部長會議應通過一項全面且有效的規範-禁止導致漁撈能力過剩(overcapacity)和過度捕撈(overfishing)的漁業補貼，刪除有助非法、未報告、不受規範漁撈行為之補貼，並認同給予開發中國家會員和低度開發國家會員適當且有效的特殊與差別待遇為此談判不可缺少的一部分。

決定如下：

1. 特此通過附屬於本決議之世界貿易組織協定修正議定書，並提交會員接受。
2. 本議定書應即此開放供會員接受。
3. 本議定書應依世界貿易組織協定第 10 條第 3 項之規定生效。
4. 儘管漁業補貼協定第 9.4 條之相關規範，規則談判集團應持續依據文件 WT/MIN(21)/W/5 與 WT/MIN(22)/W/20 中之待決議題進行談判，以向世界貿易組織第 13 屆部長會議針對可獲致完整漁業補貼協定之附加條款提出建議，包括進一步規範導致漁撈能力過剩和過度捕撈之漁業補貼，並認同給予開發中國家會員和低度開發國家會員適當且有效的特殊和差別待遇為此談判不可缺少的一部分。

附屬文件

馬拉喀什設立世界貿易組織協定修正議定書

漁業補貼協定

世界貿易組織會員國

有鑒於部長會議依《馬拉喀什設立世界貿易組織協定》(以下稱「世界貿易組織協定」)第 10 條第 1 項規定，於 WT/MIN(22)/33 – WT/L/1144 中所採認之決定；

同意如下：

1. 世界貿易組織協定附件 1A 應於本議定書依第 4 點生效後進行修正，將本議定書之附件即漁業補貼協定排序於補貼及平衡措施協定之後。
2. 不得對本議定書中之任何條文提出保留。
3. 本議定書即此開放會員接受。
4. 本議定書應依世界貿易組織協定第 10 條第 3 項生效¹。
5. 本議定書應交存於世界貿易組織秘書長，秘書長應立即提供每一會員一份經核證無誤的副本，並通知會員每一件依據世界貿易組織協定第 10 條第 3 項接受本議定書之接受書。
6. 本議定書應依據《聯合國憲章》第 102 條登記。

本議定書於 2022 年 6 月 17 日在日內瓦以英文、法文和西班牙文完成，各文本同一作準。

¹ 為計算依據世界貿易組織協定第 10 條第 3 項所規定會員接受之情形，歐盟為自身及其會員國所提交乙份接受書，應以歐盟會員國兼具世界貿易組織會員之數目，計算為相同數目世界貿易組織會員之接受書。

附件

漁業補貼協定

第一條：範圍

本協定適用於海洋漁撈行為及與漁撈行為相關之海上活動的補貼，且限定在符合補貼及平衡措施協定第 1.1 條且具第 2 條特定性之補貼^{1,2,3}。

第二條：定義

就本協定而言：

- (a) 「魚」係指所有海洋生物資源的種類，無論是否經加工；
- (b) 「漁撈行為」係指搜尋、吸引、定位、捕捉、採集或收獲魚類，或合理預期會導致吸引、定位、捕捉、採集或收獲魚類的任何其他活動；
- (c) 「漁撈行為相關活動」係指支持漁撈行為或為漁撈行為做準備的任何作業，包括卸魚、包裝、加工、轉運或運輸尚未在港口卸魚的魚，以及提供人員、燃油、裝備等其他海上補給；
- (d) 「漁船」係指用於、配以裝備以用於或有意用於漁撈行為或漁撈行為相關活動的船舶、艦艇或任何型態的船隻；
- (e) 「經營者」係指漁船所有權人，或負責、指揮、控制船舶的任何人。

第三條：有助非法、未報告及不受規範漁撈行為之補貼⁴

3.1 任何會員不得向從事非法、未報告及不受規範(IUU)漁撈行為或漁撈行為相關活動的漁船或經營者⁵授予或維持各類補貼。

¹ 更明確地說，水產養殖和內陸漁業被排除在本協定的範圍之外。

² 更明確地說，入漁協定項下的政府間支付不得被視為本協定所稱之補貼。

³ 更明確地說，就本協定而言，補貼係歸屬於授予補貼之會員，不論所涉船隻懸掛之船旗或船籍國，或接受補貼者之國籍為何。

⁴ 「非法、未報告及不受規範漁撈行為」係指聯合國糧食及農業組織(FAO)於 2001 年通過《預防、制止和消除非法、未報告及不受規範漁撈行為國際行動計畫》，第 3 段所規定之活動。

⁵ 就第 3 條而言，「經營者」即指發生 IUU 漁撈行為時，第 2(e)條所稱經營者。更明確地說，禁止向從事 IUU 漁撈行為的經營者提供或維持補貼，係指對海上漁撈行為及漁撈行為相關活動

3.2 就第 3.1 條而言，漁船或經營者若經以下三者任一做出確認決定，應被視為從事非法、未報告及不受規範漁撈行為^{6,7}：

- (a) 沿岸國就其法律管轄範圍內之活動；或
- (b) 船旗國就懸掛其旗幟船舶之活動；或
- (c) 區域漁業管理組織或協議依其規範與規程及相關國際法，就其權限範圍內之海域及物種所為之確認決定，包括透過提出即時通知及相關資訊。

3.3 (a) 第 3.2 條所稱確認決定⁸係指會員對從事非法、未報告及不受規範漁撈行為的漁船或經營者之最終裁定，或區域漁業管理組織或協議對從事非法、未報告及不受規範漁撈行為的漁船或經營者之最終清單；

- (b) 就第 3.2(a)條而言，第 3.1 條禁令的適用應是沿岸國會員基於相關事實資訊所為之確認決定，且沿岸國會員已提送下列資料給船旗國會員，若可得知補貼會員為何者，應一併提送：

- (i) 透過適當管道提送即時通知：聲明該漁船或經營者，其因從事非法、未報告及不受規範漁撈行為被暫時扣留以待進一步調查，或該沿岸國會員已基於任何相關事實資訊、適用法律、法規、行政程序或其他相關措施，開始對是否從事非法、未報告及不受規範漁撈行為進行調查。

- (ii) 交換相關資訊的機會⁹：在沿岸國做出確認決定前，提供交換相關資訊的機會，以便此等資訊在做出決定前可獲考量。沿岸國會員得規範資訊交換的方式及時間；以及

- (iii) 最終決定，以及任何制裁，若可行，制裁期限亦應提供。

沿岸國應向依第 9.1 條設立之委員會(在本協定中稱為「委員會」)通知其確認決定。

提供的補貼。

⁶ 本條中的任何內容均不得解釋為會員有啟動或做出 IUU 漁撈行為調查或確認決定之義務。

⁷ 本條中的任何內容均不得做出影響相關國際文書所列實體的權限或授予該等實體做出 IUU 漁撈行為確認決定之新權利的解釋。

⁸ 本條中的任何內容均不得做出延遲或影響 IUU 漁撈行為確認決定之有效性或可執行性的解釋。

⁹ 例如，這可能包括對話或書面資訊交換的機會，倘船旗國或授予補貼之會員提出要求。

- 3.4 補貼會員在決定第 3.1 條禁令的實施期限時，應考量漁船或經營者從事非法、未報告及不受規範漁撈行為之性質、嚴重性及是否累犯。第 3.1 條禁令的實施期應至少相當於因確認決定而做出之制裁¹⁰的執行期，或只要該漁船或經營者仍被列在區域漁業管理組織或協議最終清單。兩者取其時限較長者。
- 3.5 補貼會員採取第 3.1 條之措施時，應依第 8.3 條通知委員會。
- 3.6 若港口國會員通知補貼會員其有充分理由相信其港口內的某受渠補貼之漁船從事非法、未報告及不受規範漁撈行為，補貼會員應充分考慮其收到之資訊，並對補貼採取適當之行動。
- 3.7 各會員應有相應之法律、法規和/或行政程序，以確保不授予或維持第 3.1 條所指之補貼，包括本協定生效時既已存在之補貼。
- 3.8 自本協定生效日起兩年內，開發中國家會員(包括低度開發國家會員)在其專屬經濟海域內所授予或維持之補貼，應豁免於因本協定第 3.1 條和第 10 條而採取之行動。

第四條：涉及已過漁魚群(Overfished stocks)之補貼

- 4.1 任何會員不得向從事涉及已過漁魚群之漁撈行為或漁撈行為相關活動授予或維持各類補貼。
- 4.2 就本條之目的而言，若沿岸國會員就發生在其法律管轄範圍內漁撈行為之目標魚群，認定該魚群已過漁，或相關區域漁業管理組織或協議就其權限範圍內海域及物種，認定該魚群已過漁，則該等魚群為已過漁，此等認定係基於最佳可獲得科學證據為之。
- 4.3 儘管有第 4.1 條之規定，但會員仍得授予或維持第 4.1 條之補貼，倘若該補貼或有其他措施係為重建(rebuild)該魚群資源(stock)至生物可持續水準¹¹(biologically sustainable level)。
- 4.4 自本協定生效日起兩年內，開發中國家會員(包括低度開發國家)在其專屬經濟海域內授予或維持的補貼，應豁免於因本協定第 4.1 條和第 10 條而採取

¹⁰ 制裁的終止係根據做出第 3.2 條所稱確認決定的主管機關之法律或程序為之。

¹¹ 就本段而言，生物可持續水準係由漁撈或漁撈相關活動所在區域具有管轄權的沿海會員依據最大可持續產量(MSY)或其他參考點所決定，基於可獲取的漁業相關資料為之；或由相關區域漁業管理組織或協議在其權限範圍內之海域及物種為之。

之行動。

第五條：其他補貼

- 5.1 任何會員不得向在沿岸會員或沿岸非會員管轄範圍以外，或在相關區域漁業管理組織或協議權限範圍以外之漁撈行為或漁撈行為相關活動，授予或維持各類補貼。
- 5.2 會員對非懸掛該會員國旗幟的漁船授予補貼時，應有特殊規範(special care)及合理限制(due restraint)。
- 5.3 會員對涉及魚群狀況不明(unknown)之漁撈行為或漁撈行為相關活動授予補貼時，應有特殊規範及合理限制。

第六條：低度開發國家會員之特殊規範

會員應合理限制對涉及低度開發國家會員之案件的裁處，並在探尋解決方案時，應考量該低度開發國家會員涉案之具體情況。

第七條：技術援助和能力建構

就執行本協定各項措施而言，具目標性的技術合作及能力建構之援助應提供給開發中國家會員，包括低度開發國家會員。為支持此類援助，世界貿易組織應與聯合國糧食及農業組織(FAO)、國際農業發展基金(IFAD)等相關國際組織合作，建置一個自願捐助機制。世界貿易組織會員對該機制之捐助應完全出於自願，且不得動用世界貿易組織經常性預算經費來源。

第八條：通知及透明

- 8.1 在不侵害補貼及平衡措施協定第 25 條下，為強化對漁業補貼的通知，並更有效地監督漁業補貼承諾之執行，各會員應
- (a) 提供下列資訊作為補貼及平衡措施協定第 25 條下漁業補貼例行通知

之一部分^{12,13}：其所補貼之漁撈行為活動類型或種類；

(b) 盡可能提供以下資訊作為補貼及平衡措施協定第 25 條下漁業補貼例行通知之一部分：

- (i) 提供受補貼漁業之種群狀況(如過度捕撈、最大可持續捕撈或低度捕撈)與評量參考點，以及該等種群是否與任何其他會員共享¹⁴或由區域漁業管理組織或協議管理；
- (ii) 對相關魚群之現行養護管理措施；
- (iii) 受補貼漁業之船隊捕魚量能；
- (iv) 受補貼漁船或因該補貼而獲益之漁船的船名和識別碼；
- (v) 受補貼漁業之魚種或魚類的漁獲量¹⁵。

8.2 各會員應每年以書面通知委員會，提供該會員已做出確認決定從事非法、未報告及不受規範漁撈行為之漁船與經營者清單。

8.3 各會員應在本協定生效日起一年內，將現有措施或為確保本協定之執行與管理而採取的措施通知委員會，包括為執行第 3、4 和 5 條所述之禁令而採取之步驟。此後，此等措施若有任何修正或為執行第 3 條所述之禁令而採行之新措施，各會員應立即通報委員會。

8.4 各會員應在本協定生效日一年內，將其漁業管理體制與涉及本協定之法律、法規及行政程序提供委員會，此後，若有任何修正也應立即通知委員會。會員得透過提供此等資訊之官方或其他適當網站的電子連結，履行此項義務。

8.5 會員得請求具通知義務之會員就渠依本條規定所提通知或資訊，進一步提供資訊。該具通知義務之會員應盡速以書面提出完整回復。若一會員認為有通知或資訊並未依本條規定提出，該會員得將此問題提請其他會員或委員會注意。

¹² 就第 8.1 條而言，除補貼及平衡措施協定第 25 條要求會員應提供的資訊，以及補貼及平衡委員會透過調查問卷(如 G/SCM/6/Rev.1)規定會員應提供的資訊之外，會員尚須提供本條所列各項資訊。

¹³ 對於低度開發國家會員，以及依世界貿易組織秘書處公告之糧農組織最新數據，年度海洋捕撈產量全球份額不超過 0.8% 的開發中國家會員，本段所要求之補充資訊通知文件，可每四年製作一次。

¹⁴ 「共享種群」係指出現在兩個或多個沿岸會員的專屬經濟區內，或同時存在於專屬經濟區內、專屬經濟區外以及鄰接海域的種群。

¹⁵ 對於多魚種漁業，會員可提供其他相關及可獲得之漁獲量數據替代。

8.6 會員應在本協定生效後，將其參與之任何區域漁業管理組織或協議，以書面通知委員會。該通知應至少包括該區域漁業管理組織或協議之成立法律文件文本、權限範圍內之海域及物種、管理魚群狀況的資訊、養護和管理措施、做出非法、未報告及不受規範漁撈行為確認決定之規則及程序，以及從事非法、未報告及不受規範漁撈行為之漁船與經營者之最即時清單。該通知得由個別會員提交，或由一組會員提交¹⁶。此等資訊之任何更改應立即通知委員會。委員會應將會員依本條文通知之區域漁業管理組織或協議相關資訊，建立清單並予維持。

8.7 會員咸認就某項措施提出通知並不預判以下各點：

- (a) 該通知文件在 1994 年關稅暨貿易總協定、補貼及平衡措施協定或本協定下之法律地位；
- (b) 該措施於補貼及平衡措施協定下之效力；或
- (c) 措施本身之性質。

8.8 本條文的任何內容都不需要提供機密資訊。

第九條：機構安排

9.1 一個由各會員代表組成的漁業補貼委員會就此成立。委員會應選出自己的主席，每年應召開至少兩次會議，或任何會員依本協定相關條文提出要求。委員會應履行本協定或會員所賦予之職責，並應使各會員有機會就與本協定實施或促進其目標之任何相關事項進行諮商。世界貿易組織秘書處應擔任委員會秘書處。

9.2 委員會應至少每兩年審查依第 3 條和第 8 條及本條提供之所有資訊。

9.3 委員會應每年審查本協定的實施和運作，並將其目標納入考量。委員會應每年向貨品貿易委員會通報審查期間之發展情況。

9.4 委員會應於協定生效日後的五年內，並於其後每三年，審查本協定之運作，確認所有必要之修正，以改善本協定的運作，並同時考慮本協定之目標。委員會得適時向貨品貿易委員會提交修正本協定之建議，並考慮在協定實施過

¹⁶ 本項通知義務之履行，亦可透過提供一個最新的電子鏈接，指向通知會員官方網頁，或展示此訊息之其他適當的官方網頁。

程中所獲得之經驗等事項。

- 9.5 委員會應與國際糧農組織及其他相關國際組織在漁業管理上保持密切聯繫，包括相關區域漁業管理組織或協議。

第十條：爭端解決

- 10.1 除本協定另有規定外，爭端解決規則與程序瞭解書所闡述及適用之 1994 年關稅暨貿易總協定第 22 條與第 23 條應適用於本協定下的諮商與爭端解決¹⁷。
- 10.2 在不影響本條第 1 項下，補貼及平衡措施協定第 4 條¹⁸規定應適用於依本協定第 3 條、第 4 條與第 5 條進行的諮商與爭端解決。

第十一條：最終條款

- 11.1 除第 3 條與第 4 條規定外，本協定不禁止會員提供符合以下條件之天災¹⁹救助：
- (a) 僅限於特定天災的救濟；
 - (b) 僅限於受影響的地理區域；
 - (c) 有時間限制；以及
 - (d) 有關重建補貼，僅限於將受影響的漁業及/或受影響的船隊恢復至受災前之水準。
- 11.2 (a) 本協定，包括與本協定有關的任何決定、建議和裁決，對領土主張或海域劃界無法律意涵。
- (b) 依本協定第 10 條所設立之專家小組，對於任何要求專家小組基於其所宣稱之領土主張或海域劃界做出決定之請求，不得作出任何決定²⁰。
- 11.3 本協定中的任何內容均不得以侵害會員依包括海洋法在內國際法所生之管

¹⁷ 1994 年關稅暨貿易總協定第 23 條第 1(b)與 1(c)款，以及爭端解決瞭解書(DSU)第 26 條不適用於本協定下的爭端解決。

¹⁸ 就本條而言，補貼及平衡措施協定第 4 條所稱禁止性補貼，係指本協定第 3 條、第 4 條或第 5 條所述須禁止之補貼。

¹⁹ 更明確地說，本條不適用於經濟或金融危機。

²⁰ 此限制亦適用於依爭端解決瞭解書(DSU)第 25 條所設之仲裁員。

轄權、權利和義務之方式²¹被解釋或適用。

11.4 除另有規定外，本協定並無任何內容意指會員受其未以會員或合作非會員參與之任何區域漁業管理組織或協議的措施或決定所拘束，或承認其未以會員或合作非會員參與之任何區域漁業管理組織或協議。

11.5 本協定並非修正或廢止任何補貼及平衡措施協定中之權利、義務。

第十二條：如果未採用全面的規範，則終止協定

除總理事會另有決定，若本協定生效後四年內全面性規範未被採認，本協定應立即終止。

²¹ 包括區域漁業管理組織或協議的規範和規程。

22 June 2022

(22-4789)

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**Ministerial Conference
Twelfth Session
Geneva, 12-15 June 2022**

AGREEMENT ON FISHERIES SUBSIDIES

MINISTERIAL DECISION OF 17 JUNE 2022

The Ministerial Conference;

Having regard to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Recalling the mandate given to Members at the Eleventh WTO Ministerial Conference in 2017 in Buenos Aires that the next Ministerial Conference should adopt an agreement on comprehensive and effective disciplines that prohibits certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminates subsidies that contribute to IUU-fishing recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

Decides as follows:

1. The Protocol amending the WTO Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
 2. The Protocol shall hereby be open for acceptance by Members.
 3. The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
 4. Notwithstanding Article 9.4 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.
-

ATTACHMENT

**PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING
THE WORLD TRADE ORGANIZATION**

AGREEMENT ON FISHERIES SUBSIDIES

Members of the World Trade Organization;

Having regard to the Decision of the Ministerial Conference in document WT/MIN(22)/33 – WT/L/1144 adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Hereby agree as follows:

1. Annex 1A to the WTO Agreement shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of the Agreement on Fisheries Subsidies, as set out in the Annex to this Protocol, to be placed after the Agreement on Subsidies and Countervailing Measures.
2. No reservations may be made in respect of any of the provisions of this Protocol.
3. This Protocol is hereby open for acceptance by Members.
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.¹
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this seventeenth day of June two thousand and twenty-two, in a single copy in the English, French and Spanish languages, each text being authentic.

¹ For the purposes of calculation of acceptances under Article X:3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.

ANNEX

AGREEMENT ON FISHERIES SUBSIDIES

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.

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.

**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;
- (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").

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.

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.

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.

3.5 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.

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.

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.

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;
 - (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.

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.

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 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/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.

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.

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.

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;
- (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.

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.

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.

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.
