

The WTO Agreement on Fisheries Subsidies

What it does and what comes next

Action items

- **Now that WTO Members have adopted the Agreement on Fisheries Subsidies to end prohibited fisheries subsidies**, it is important for each Member to **quickly deposit** its “**instrument of acceptance**” of the protocol of the Agreement on Fisheries Subsidies. For the Agreement to be operational, two-thirds of WTO Members have to deposit these “instruments of acceptance” at the WTO.
- The WTO Secretariat can provide assistance including on depositing the instrument of acceptance.
- Members agreed at MC12 to continue negotiations on outstanding issues, with a view to making recommendations by MC13 for additional provisions that would further enhance the disciplines of the Agreement.

Context

- The WTO Agreement on Fisheries Subsidies, adopted at the 12th Ministerial Conference on 17 June 2022, marks a major step forward for ocean sustainability by **prohibiting harmful fisheries subsidies**, which are a key factor in the widespread depredation of the world's fish stocks.
- The new disciplines will have important, positive effects on the sustainability of marine fish stocks and fisheries.
 - By curbing subsidies to illegal, unreported and unregulated fishing, the Agreement creates a powerful new weapon in the global fight against such fishing.
 - By prohibiting subsidies to fishing on overfished stocks, the Agreement puts important protections in place where management measures are ineffective.
 - By prohibiting subsidies to fishing on the unregulated high seas, the Agreement also puts important protections in place where management measures do not exist.
- Improving the sustainability of fisheries is critical to the development of the sustainable blue economy, and especially to the millions of mostly poor people who make their living by fishing.
- The new Agreement thus **delivers on the mandates of SDG Target 14.6** and the 11th Ministerial Conference:

“...to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate 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 [the WTO] negotiations.”

- The Agreement represents an **historical achievement**. It is:
 - The first SDG target to be fully met;
 - The first SDG target to be met through a multilateral agreement;
 - The first WTO agreement to focus on the environment;
 - The first broadly-focused binding multilateral agreement on ocean sustainability; and
 - Only the second agreement reached at the WTO since its inception.

What subsidies does the Agreement prohibit and otherwise discipline?

▪ Subsidies contributing to Illegal, Unreported and Unregulated (IUU) fishing

- The Agreement prohibits subsidies for fishing or fishing related activities when an IUU determination is made by a coastal Member, a flag State Member or a relevant Regional Fisheries Management Organization/Arrangement (RFMO/A), within their respective competence. Members also recognize the important role of port States in combatting IUU fishing.
- The discipline provides procedural guidance regarding how an IUU determination triggers the subsidy prohibition, as well as the proportionality of the IUU determination.
 - To trigger the prohibition, coastal state IUU determinations are subject to notification and information exchange provisions, and IUU listings by RFMO/As are subject to their own applicable procedures and international law, including notification and provision of information.
 - Concerning proportionality, the subsidizing Member is to take into account the nature, gravity and repetition of the IUU fishing committed when setting the duration of the prohibition, which is to be at least as long as the sanction resulting from the IUU determination.

▪ Subsidies regarding overfished stocks

- The Agreement prohibits subsidies for fishing or fishing related activities regarding a stock in an overfished condition as determined by a coastal Member or RFMO/A within its competence.
- A Member can continue to provide subsidies for fishing an overfished stock only if the subsidy is for rebuilding the stock, or other measures are implemented for this purpose.

▪ Subsidies provided to fishing or fishing related activities in the unregulated high seas

- The Agreement prohibits subsidies provided to fishing or fishing related activities outside the jurisdiction of a coastal Member or a coastal non-Member, and outside the competence of a relevant RFMO/A, i.e., in areas and for species not covered by that RFMO/A.

▪ Other disciplines and provisions

- Members are to take **special care** and exercise **due restraint**:
 - When granting subsidies to vessels not flying their flag; and

- When granting subsidies to fishing or fishing related activities regarding **stocks the status of which is unknown**.

- **Notification and Transparency** – In addition to their regular periodic notifications of subsidies under the Agreement on Subsidies and Countervailing Measures, every Member is required to provide information relevant to the implementation of the Agreement. This information includes the type or kind of fishing activity for which the subsidy is provided; and to the extent possible the status of the fish stocks in question, catch data, fisheries management measures, information on vessels benefitting from subsidies, and a list of vessels and operators it has determined to have engaged in IUU fishing.
- The Agreement is **enforceable** through the WTO dispute settlement system.

How is special and differential treatment addressed in the Agreement?

- For the prohibitions on subsidies contributing to IUU fishing as well as subsidies regarding overfished stocks, the subsidies of developing and LDC Members provided within their own exclusive economic zones (EEZ) benefit from a **peace clause**, under which dispute settlement will not apply for two years from the date of entry into force of the Agreement.
- Members are to exercise **due restraint in raising matters involving an LDC Member**, and solutions explored are to take into consideration the specific situation of the LDC Member involved, if any.
- Developing Members with a share of the volume of global fish catch of not more than 0.8%, and LDCs, may provide **notifications** of fisheries-related information every four years instead of every two years.
- **Targeted technical assistance and capacity building** is to be provided to developing Members and LDCs to implement the Agreement. In support of this assistance, a WTO voluntary **funding mechanism** is to be established. This Fund will be used to assist Members in:
 - Integrating fisheries sustainability elements into their fisheries subsidies policies and practices;
 - Strengthening sustainable fisheries management systems; and
 - Improving notifications and transparency, particularly of fisheries related information.

How is the Agreement accepted by Members and entered into force?

- For the Agreement to become operational, and thus deliver its sustainability results, two-thirds of WTO Members have to deposit their “instruments of acceptance” in the WTO. This means they have to complete their domestic acceptance procedures.
- The nature and duration of domestic acceptance procedures varies from one Member to another. To ensure that the Agreement enters into force at the earliest possible date, all Members are strongly encouraged to start their domestic processes immediately and complete them as quickly as possible and then deposit their instruments of acceptance with the WTO Depositary.

What is the built-in agenda for further negotiations?

- In the MC12 Ministerial Decision adopting the new Agreement, and in the Agreement itself, Members agreed to continue negotiations on outstanding issues, with a view to making recommendations **by MC13** for additional provisions that would further enhance the disciplines of the Agreement.
- Many technically complex and politically sensitive issues were resolved in the Agreement, and the draft texts previously sent to Ministers, which are referred to in the Decision, provide a strong basis for further negotiations. This “**second wave**” of negotiations thus is expected to be focused and able to deliver results by MC13. The Agreement provides for a **maximum period** to complete these negotiations of four years from entry into force of the Agreement.



How to accept the Protocol of Amendment to insert the Agreement on Fisheries Subsidies into Annex 1A of the WTO Agreement

https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/agreement_fisheries_subsidies_e.htm



WTO website on the Agreement on Fisheries Subsidies:

www.wto.org/fish