The WTO Agreement on Fisheries Subsidies

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Outline

Overview of the Agreement

❖ Scope
❖ Prohibitions
❖ Cross-cutting rules

What Members need to do?

❖ Deposit an instrument of acceptance so the Agreement enters into force
❖ Upon entry into force:
  o Establish a Committee
  o Notify fisheries-related information
  o Adopt comprehensive disciplines
### The Agreement on Subsidies and Countervailing Measures (ASCM) and fisheries subsidies

**ASCM Disciplines**

*trade-distortive effects* of subsidies

- **Prohibition** of export subsidies and import substitution subsidies (presumed trade distortive)

- **Adverse trade effects** disciplines on other specific subsidies (trade distortion proved based on evidence)

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**Subsidies’ negative effects on sustainability of natural resources**

- **Not addressed** (by ASCM or other WTO rules)
From Doha mandate to MC11 decision

Doha Mandate
- to “clarify and improve” existing (ASCM) rules, with link to environment, and developing Members’ LDCs’ concerns

2005
- Hong Kong
  - elaborated mandate: “Prohibit [...] certain forms of fisheries subsidies that contribute to overcapacity and overfishing” + SDT

2015
- SDGs
  - Target 14.6: “by 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing” + SDT integral

2017
- MC11 Ministerial Decision
  - conclude negotiations by 2019 (MC12) – same goals as Target 14.6
17 June 2022, **MC12 Decision** (MIN(22)/W/33) to:

- Open for acceptance a protocol to amend the Marrakesh Agreement by the insertion of the **Agreement on Fisheries Subsidies**; and

- Continue negotiations on outstanding issues

**Historic achievement**

The Agreement represents a historic achievement because it is:

- The first **WTO agreement** to focus on the **environment**; and

- Only the second agreement reached at the WTO since its inception.
SCOPE

Subsidies to IUU fishing
Subsidies to overfished stocks
Fishing in the unregulated high seas

Prohibitions

Subject to termination clause
Enforceable through the WTO dispute settlement system

CROSS-CUTTING RULES

Other disciplines
To take special care and exercise due restraint when subsidizing:
- Vessels not flying that Member’s flag
- Fishing on unassessed stock...except for disaster relief

Institutional arrangements
Notification and Transparency
Technical Assistance

Overview of the Agreement
S&DT in the Agreement
Within the scope:
- Subsidies (as defined in the ASCM)
- That are specific (also as defined in the ASCM)
- To wild marine capture fishing and fishing related activities taking place at sea

Outside the scope:
- Aquaculture
- Inland fishing
- Onshore activities
A coastal State

Fisheries jurisdiction

A flag State

The High Seas

A Regional Fisheries Management Organization or Arrangement (RFMO/A)

Exclusive Economic Zone (EEZ)

A coastal State
Who can make an IUU determination?

Coastal Member:
- for activities in areas under its jurisdiction
- if it is a final IUU determination
- if it is based on relevant factual information
- If the opportunity to exchange information with the flag State requirement is satisfied

Flag State Member:
- for activities by vessels flying its flag
- if it is a final listing
- if it is based on applicable procedures of that RFMO/A and international law, including notification and provision of information

RFMO/A:
- in areas and for species under its competence

Where?

Coastal Member:
- for activities in areas under its jurisdiction

Flag State Member:
- for activities by vessels flying its flag

RFMO/A:
- in areas and for species under its competence

When will it trigger the subsidy prohibition?

Coastal Member:
- if it is a final IUU determination
- if it is based on relevant factual information
- If the opportunity to exchange information with the flag State requirement is satisfied

Flag State Member:
- if it is a final listing
- if it is based on applicable procedures of that RFMO/A and international law, including notification and provision of information

Subsidizing Member:
- Must stop any subsidy to such a vessel or operator
- But also, it must:
  - Take into account the nature, gravity and repetition of the IUU fishing committed when setting the duration of the prohibition
  - Give due regard as it deems appropriate to the information received from the Port State
  - Notify measure taken to remove subsidies

Subsidies to IUU fishing

Where?

Coastal Member:
- for activities in areas under its jurisdiction

Flag State Member:
- for activities by vessels flying its flag

RFMO/A:
- in areas and for species under its competence

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Subsidies to IUU fishing
Who can determine that?

Coastal Member

RFMO/A

Where?

When is the stock overfished?

❖ When its biomass is under a biologically sustainable level (BSL)

❖ for activities in areas under its jurisdiction

❖ in areas and for species under its competence

Based on what?

❖ Using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery

❖ Best scientific evidence available

❖ Best scientific evidence available

Subsidizing Member

❖ Must stop any subsidy to fishing regarding an overfished stock

❖ Unless…
  o the subsidy is for rebuilding the stock to a BSL
  o other measures are implemented for rebuilding the stock to a BSL
No Member shall grant or maintain subsidies for fishing in unregulated high seas!

Unregulated high seas are the areas:
- outside the jurisdiction of a coastal Member or a coastal non-Member; and
- outside the competence of a relevant RFMO/A
Other disciplines

Members must take special care and exercise due restraint when subsidizing:

› Vessels not flying that Member’s flag
› Fishing on unassessed stock

…except for disaster relief *

* By virtue of Article 11.1, this exemption does not apply to Articles 3 and 4. Exemption is also limited to the geographic area affected by a particular disaster, which makes it inapplicable outside the jurisdiction of a coastal Member. Thus, this exemption only applies to disciplines concerning vessels not flying the flag of the subsidizing Member and regarding fishing on unassessed stocks.
Special and Differential Treatment in the Agreement

- **Flexibilities for developing and LDC Members**
  - **Peace clause**
    - Dispute settlement will not apply for two years
    - For disciplines on IUU fishing and overfished stocks
    - Within exclusive economic zones (EEZ)
  - **Notification of fisheries-related information**
    - Every four years instead of every two years
    - If a developing Member a share of the volume of global fish catch is not more than 0.8%
  - **Technical assistance and capacity building**
    - Targeted technical assistance and capacity building assistance for the purpose of implementation of the disciplines under this Agreement.
    - Establishment of a voluntary WTO funding mechanism (Fish Fund)

- **Flexibilities for LDC Members only**
  - **Due restraint**
    - Members must exercise due restraint in raising matters involving an LDC Member
Establish a Fish Fund

❖ Upon entry into force, the Agreement envisages the creation of a voluntary WTO funding mechanism

❖ **The Fund will assist with:**

- Integrating fisheries sustainability elements into fisheries subsidies policies and practices
- Strengthening sustainable fisheries management systems
- Complying with notification and transparency obligations, particularly on fisheries related information policies and practices

❖ To operate in cooperation with other relevant international organizations – including FAO and IFAD

❖ Aims at integrating and creating coherence between subsidy policies and fisheries sustainability within the beneficiary governments
Deposit an “instrument of acceptance” of the Agreement

Once two-thirds of WTO Members deposit their “instruments of acceptance” in the WTO, the Agreement enters into force

Individually

How to do this?
Members should complete their domestic acceptance procedures and **deposit their “instruments of acceptance”***

No single, uniform approach for drawing up an instrument of acceptance. But, in line with established depositary practice, **the instrument of acceptance must:**

- clearly **identify the Protocol** by its full title and by the place and date of its adoption (i.e. “the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization, Agreement on Fisheries Subsidies, done at Geneva on 17 June 2022” or, alternatively, reproduce the Protocol as an attachment to the instrument of acceptance);
- state that the Member concerned formally accepts the Protocol and **expresses its consent to be bound** by it;
- state the **date and the place** of issuance of the instrument of acceptance;
- be **signed**; and
- state the **name and title of the person** signing the instrument.

In accordance with paragraph 3 of Article X of the WTO Agreement, once **two-thirds of WTO Members** deposit their “instruments of acceptance” in the WTO, **the Agreement enters into force**

*Further information on 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*
Once two-thirds of WTO Members deposit their “instruments of acceptance” in the WTO, the Agreement enters into force.
Establish a Committee on Fisheries Subsidies

**Establishment of a Committee on Fisheries Subsidies**
- Composed of representatives from each of the Members
- Elects its own Chair
- Meets not less than twice a year
- Affords Members the opportunity to consult

**“Annual review”**
- Review and reporting on the implementation and operation of the Agreement
- Inform the CTG of developments during the period covered by such reviews

**“Periodic review”**
- Review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement
- Where appropriate, the Committee may submit to the CTG proposals to amend the text of this Agreement

- Composed of representatives from each of the Members
- Elects its own Chair
- Meets not less than twice a year
- Affords Members the opportunity to consult

Entry into force of the Agreement
- Annually
- Not less than every two years
- Not later than five years after the date of entry into force of this Agreement and every three years thereafter
Establish a Committee on Fisheries Subsidies

Deposit an “instrument of acceptance” of the Agreement

Notify fisheries-related information

Once two-thirds of WTO Members deposit their “instruments of acceptance” in the WTO, the Agreement enters into force

How to do this?
Individually
Automatically
Individually/collectively
Notification obligation under Article 25 of the SCM Agreement are applicable

Members must provide additional fisheries-related information

- Measures concerning implementation and administration of the Agreement
- Descriptions of fisheries regimes
- Membership to any RFMO/As
- List of vessels and operators determined to have engaged in IUU fishing

By 30 June of every second year (the odd numbered years)
*every 4 years for certain developing (<0.8%) and LDC Members

Note: any confidential information does not have to be notified!

What Members need to do now? Transparency

- To the extent possible:
  ✓ Status of the fish stocks
  ✓ CMM
  ✓ Fleet capacity
  ✓ Vessel’s name and number
  ✓ Catch data

Entry into force of the Agreement
Upon entry into force and promptly notify and updates
Within one year
Annually

What Members need to do now? Transparency
Establish a Committee on Fisheries Subsidies

Deposit an “instrument of acceptance” of the Agreement

Notify fisheries-related information

Adopt more comprehensive disciplines in 4 years of the entry into force of the Agreement

Track 1: Adoption of comprehensive disciplines

Track 2: Termination of the Agreement, unless decided otherwise

Once two-thirds of WTO Members deposit their “instruments of acceptance” in the WTO, the Agreement enters into force

After 4 years of the entry into force

How to do this?

Individually

Automatically

Individually/collectively

Through the Negotiating Group on Rules
Adopt comprehensive disciplines

- In the MC12 decision, 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.

- This includes further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing the appropriate SDT.

- “Termination clause”
  Termination of the Agreement if comprehensive disciplines are not adopted within four years after the entry into force, unless agreed otherwise.