



**NEW ZEALAND**  
**FOREIGN AFFAIRS & TRADE**  
Manatū Aorere

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# World Trade Organization Agreement on Fisheries Subsidies

## National Interest Analysis





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## Frequently used acronyms and terms

ASCM	WTO Agreement on Subsidies and Countervailing Measures
Coastal Member	Member State with waters under its jurisdiction
Flag State	The State whose jurisdiction the vessel is under
FSA	WTO Agreement on Fisheries Subsidies
FTA	Free Trade Agreement
IUU	Illegal, unreported, and unregulated fishing
MFAT	New Zealand Ministry of Foreign Affairs and Trade
MC12	World Trade Organization 12 <sup>th</sup> Ministerial Conference held in Geneva in 2022
OCOF	Overcapacity and overfishing
Port State	A State receiving fishing vessels in its ports, including those that do not fly its flag
Subsidizing Member	A WTO Member who provides subsidies to its fishing sector
WTO	World Trade Organization

# 1 Executive summary

In June 2022, Aotearoa New Zealand alongside 163 other World Trade Organization (WTO) Members announced the conclusion of the Agreement on Fisheries Subsidies (FSA) after over 20 years of negotiations. The FSA marks a historic step for the sustainability of this global shared resource, and for the livelihoods of those with fisheries interests. It is the first WTO agreement to focus on the environment, the first to substantially meet a United Nations Sustainable Development Goal, and only the second multilateral agreement concluded at the WTO since its inception.

New Zealand has been a long-standing and leading advocate of fisheries subsidies reform at the WTO. New Zealand was the first WTO Member to raise the issue in the WTO Trade and Environment Committee in the late 1990s, and under New Zealand's leadership as Chair of the "Friends of Fish" Grouping it was included in the WTO Doha Development Round negotiating agenda in 2001.

The multilateral deal is binding and includes major commitments on fisheries subsidies. This is significant, as fisheries subsidies are a key factor in the widespread depletion of the world's fish stocks. This is because certain forms of subsidies incentivise fishing beyond sustainable levels by artificially reducing the cost of fishing operations or enhancing revenues beyond those which would be available on a strictly commercial basis. The subsidies involved can include fisheries infrastructure, income support, price support and tax exemptions.

The FSA prohibits subsidies for: vessels determined to have engaged in illegal, unreported and unregulated (IUU) fishing; fishing regarding an overfished stock; and, fishing on the unregulated high seas (outside of areas beyond national jurisdiction and where there are no regional fisheries management agreements). In addition, the FSA contains two 'due restraint' clauses: one for subsidies provided to vessels not flying the subsidising Member's flag; and, the other for subsidies for fishing when the status of the stock is unknown. Finally, it includes related notification and transparency obligations to improve the monitoring of these practices and related subsidies. The FSA balances the need for disciplines with appropriate and effective special and differential treatment measures to ensure that developing countries are able to meet the obligations. It also creates a voluntary WTO funding mechanism to provide technical assistance and capacity building for developing countries to implement the disciplines and associated reporting obligations.

Officials assess New Zealand will be able to meet the FSA obligations without changes to policy or legislation. The New Zealand Government's long-standing policy practice is to not provide direct subsidies – like capital costs or tax incentives – to the fishing industry. Additionally, New Zealand's strong IUU fishing controls, generally well-assessed stocks, and high-seas fishing practices<sup>1</sup> mean that we can comfortably comply with the FSA rules. Reporting and transparency obligations are also able to be met through existing practices. Should New Zealand choose to provide subsidies to the fishing sector in future, we would have to comply with the obligations undertaken through acceptance of the FSA, as well as fisheries subsidies disciplines New Zealand has already committed to in our free trade agreements.

For New Zealand, the FSA brings environmental advantages, as we stand to benefit from an improvement in the state of the world's oceans and the sustainability of shared fish stocks. A reduction in the global spend on fisheries subsidies will also improve the competitiveness of New Zealand's unsubsidised fishing industry in international export markets. Implementing the FSA will also demonstrate our commitment to a collective response to global environmental challenges, to the rules-based international trade architecture, and to our Pacific partner priorities.

Unfortunately, the FSA does not include all the provisions that New Zealand and other partners (including Pacific WTO Members) had sought. After more than 20 years and a difficult final stage of negotiations that required compromise and cooperation from all WTO Members, consensus on certain disciplines was not able to be achieved. Instead, outstanding elements (such as disciplines on subsidies

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<sup>1</sup> High seas fishing is limited to the Pacific and Southern Oceans, which are subject to regional fisheries management organisations or arrangements.

relating to overcapacity and overfishing and related special and differential treatment) are subject to ongoing negotiations. The FSA includes a 'sunset clause' that requires consensus to be reached on the outstanding comprehensive disciplines within four years, or the FSA risks termination (unless otherwise agreed by the WTO General Council). This is designed to establish a deadline, and associated pressure, on the WTO membership to conclude the outstanding elements. The FSA is a significant achievement for the WTO and international community. Ensuring that these outstanding elements are addressed, and the FSA is not terminated, is a key WTO priority for New Zealand.

## 2 Nature and timing of the proposed treaty action

The Agreement on Fisheries Subsidies (FSA) is a binding multilateral Agreement negotiated between New Zealand and the other 163 WTO Members. Trade Ministers announced the conclusion of negotiations on 17 June 2022 at the WTO's Twelfth Ministerial Conference (MC12).

The proposed treaty action is to amend New Zealand's WTO obligations by inserting a Protocol containing the new Agreement on Fisheries Subsidies into Annex 1A of the 1994 Marrakesh Agreement Establishing the World Trade Organization. The text of the FSA is attached to the NIA in Annex 1 and also available on the [WTO website](#).<sup>2</sup>

### *Entry into Force and when obligations take effect*

As set out in the Marrakesh Agreement (Article X, paragraph 3), the Protocol on fisheries subsidies will enter into force once two thirds of WTO Members have accepted it.<sup>3</sup>

While there is no formal deadline for WTO Members to accept the FSA, the WTO Director-General, Dr Ngozi Okonjo-Iweala, has encouraged Members to finalise domestic processes as soon as possible to enable the FSA to enter into force ahead of the next Ministerial Conference to be held in February 2024. Completing our domestic processes in a timely manner ahead of this deadline would be consistent with New Zealand's widely recognised track record and credentials as a serious and committed WTO Member and long-standing advocate for fisheries subsidies reform.

### *Application to Tokelau, the Cook Islands and Niue*

New Zealand's FSA commitments do not apply to Tokelau, the Cook Islands, or Niue. Nevertheless, Tokelau remains interested in the FSA and its broader implications, and New Zealand will engage Tokelau on its views on the ongoing negotiations.

## 3 Reasons for New Zealand becoming Party to the treaty

New Zealand should become a Party to the WTO Agreement on Fisheries Subsidies because doing so would:

- contribute to collective global action on the sustainability of shared fisheries resources;
- improve the international competitiveness of New Zealand's unsubsidised fisheries sector;
- support the resilience of Pacific economies and livelihoods, given the importance of fisheries to the region;
- demonstrate New Zealand's commitment to a strengthened rules-based trade architecture; and,
- maintain New Zealand's leadership in shaping international action on environmental issues.

*Background: Rationale for Global Fisheries Subsidies Disciplines – Ensuring Sustainability of Global Fish Stocks*

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<sup>2</sup> <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/1129.pdf&Open=True>

<sup>3</sup> As of 8 May 2023, only Switzerland, Singapore, the Seychelles the United States, and Canada (of 164 Members) have done so, however a number of Members are currently undertaking domestic ratification procedures.

There is growing concern at the decline of global fish stocks, with the percentage of stocks fished at biologically unsustainable levels increasing from 10 percent in 1974 to 35 percent in 2019.<sup>4</sup> This in turn has impacts on food security because fish account for approximately 17 percent of animal protein consumed globally. Fisheries is also vitally important to the economic prosperity of a number of countries, particularly developing countries. Taken together, these concerns led to calls for collective action at the WTO from New Zealand and others to address the detrimental impact of fisheries subsidies. New Zealand led the inclusion of this issue on the WTO Doha Development Round negotiating agenda in 2001 as Chair of the 'Friends of Fish'<sup>5</sup> grouping.

Certain forms of subsidies to fishing vessels and operators incentivise fishing beyond sustainable levels by artificially reducing the cost associated with operations. In essence, fisheries subsidies can permit vessels to fish 'too much, too long, and too far'. It is estimated that global spend on fisheries subsidies was approximately US\$35 billion in 2018,<sup>6</sup> creating the conditions for some fleets to fish stocks whose exploitation would not be economically viable without subsidisation.

The FSA prohibits subsidies under some of the most egregious circumstances. The disciplines prohibit WTO Members from providing subsidies to vessels determined to have engaged in IUU, fishing when the exploited fish stocks are judged to be overfished, and any subsidies for fishing in the unregulated high seas. Previously there was no ability to limit subsidies that contribute to over-exploitation of fisheries on the high seas - the inclusion of this discipline in the FSA is particularly impactful for the sustainability of the oceans. New Zealand's commitment to implementation of the FSA, and ensuring timely conclusion of negotiations on the outstanding elements, will contribute to collective global action to ensure the sustainability of these resources for decades to come.

#### *Benefits to New Zealand's fisheries sector*

New Zealand's fisheries sector supports people throughout Aotearoa New Zealand by providing jobs in our communities and contributing to New Zealand's economic prosperity, with annual exports valued at NZ\$1.8 billion.<sup>7</sup> New Zealand's general and long-held policy practice is to not provide direct subsidies to our fishing industry (e.g. capital costs or tax rebates).<sup>8</sup> As such, New Zealand fishers must compete against subsidised fleets, and the exports of our unsubsidised industry must compete against product originating from subsidised fishing. The disciplines under the FSA, and any future prohibitions on overcapacity and overfishing subsidies (see Section 10 of the NIA), will therefore improve the ability of our industry to compete in the international market. Additionally, over the medium term global fish prices can be expected to rise as a result of the removal of subsidies, which will likely increase the economic returns to our industry.

#### *Support for Pacific Resilience*

Fisheries resources contribute not only to Pacific economies but are also significant for social and cultural well-being and resilience. In 2019, for example, tuna fisheries added more than US\$2.25 billion to Pacific Island economies and generated more than 24,000 jobs across the region. To manage this important resource effectively, Pacific Island countries have implemented a range of robust management and monitoring measures, including through regional fisheries management organisations.

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<sup>4</sup> See FAO. (2022). The state of world fisheries and aquaculture 2020. Towards blue transformation. <https://doi.org/10.4060/cc0461en>.

<sup>5</sup> Other Members include: Argentina, Australia, Chile, Colombia, Ecuador, Iceland, Norway, Pakistan, Peru and the United States.

<sup>6</sup> See Sumaila, U. R., Ebrahim, N., Schuhbauer, A., Skerritt, D. J., Li, Y., Kim, H. S., Mallory, T. G., Lam, V.W.L, & Pauly, D. (2019). Updated estimates and analysis of global fisheries subsidies. *Marine Policy*, 109.

<sup>7</sup> For comparison, exports of wine from New Zealand totalled NZ\$2 billion, and kiwifruit NZ\$2.8 billion in 2020/21.

<sup>8</sup> Although New Zealand has previously supported research and development of an innovative fishing technology through the Primary Growth Partnership from 2012 to 2019.

Pacific Island countries played a key role in pushing for the conclusion of the FSA during WTO MC12. At a special WTO-Pacific Islands Forum Meeting in November 2022, Pacific WTO Trade Ministers welcomed the FSA and noted efforts towards acceptance of the FSA in the region.<sup>9</sup> They acknowledged the FSA as an additional important tool to complement and support the Pacific's regional fisheries management efforts. In particular, the IUU subsidy prohibition is a useful additional tool to help Pacific Island countries to counter distant water IUU fishing incursions.

Nevertheless there has been concern expressed about the burden of implementing the FSA by some Pacific Island countries. New Zealand has a history of support for Pacific fisheries management, including the development of sustainability programmes and strategies. We have signalled that we can provide support for FSA implementation and capacity building if required. This could include support for implementing the Agreement, noting the small size of some Pacific Island fisheries administrations. Beyond this, New Zealand's own ratification and implementation of the FSA would be a demonstration of our responsiveness to Pacific priorities and resilience needs and our role as a country in and of the Blue Pacific.

#### *Commitment to a rules-based global trade architecture*

The FSA marks a historic step for the WTO: it represents the first WTO agreement to focus on the environment (ocean sustainability), and importantly, only the second multilateral Agreement reached at the WTO in its 28 year history. As a result, the FSA also contributes to the Government's Trade Recovery Strategy<sup>10</sup> with its emphasis on reinvigorating and strengthening the international rules-based trade architecture. It is a systemically important outcome for the WTO, demonstrating the ability of the organisation to respond to global challenges, and conclude multilateral outcomes despite increased protectionist tendencies and geo-strategic tensions.

#### *Demonstrate New Zealand leadership in shaping international action on environmental issues*

New Zealand has been an advocate for fisheries subsidies reform at the WTO for over two decades. New Zealand was the first WTO Member to raise the issue in the WTO Trade and Environment Committee in the late 1990s, and it was included on the agenda for the WTO Doha Development Round in 2001 under our leadership as Chair of the 'Friends of Fish' Grouping. New Zealand was also asked to facilitate the negotiations at MC12, playing a key role in the final phase of the negotiations. Through the early acceptance and implementation of the FSA, New Zealand can continue to demonstrate leadership in shaping collective international action on environmental issues, including advancing our wider efforts, such as in the area of fossil fuel subsidy reform, to tackle environmentally harmful subsidies in the WTO.

## **4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand**

### **4.1 Entry into Force: Advantages and Disadvantages**

#### *Environmental Benefits*

As outlined above, the compelling advantage from the entry into force of the FSA is enhanced sustainability of global fisheries resources. Disciplines relating to overfished stocks, for example, seek to eliminate subsidies which encourage the over-fishing of such stocks and establish effective stock recovery measures. New Zealand will stand to benefit as both a nation with commercial fisheries interests, as well as generally from an improvement in the state of regional and global fisheries. New Zealand has made similar commitments in the CPTPP, UK, and EU free trade agreements.

#### *Supporting New Zealand's fishing industry*

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<sup>9</sup> The Ministerial Statement can be found [here](#).

<sup>10</sup> [Trade recovery strategy | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](#)



For New Zealand's unsubsidised fishing industry, the FSA will improve our international competitiveness on global export markets and in fishing zones, particularly if further disciplines on overcapacity and overfishing are agreed. Over 80 percent of New Zealand's total domestic commercial fish catch is exported and must compete internationally against product caught following subsidisation. With a reduction in global spend on subsidies, the New Zealand industry stands to benefit from the resulting reduction of global fishing capacity, and the strengthening sustainable fisheries management.

#### *Global Rules-Based Architecture*

New Zealand is a small export dependent country and correspondingly we are supportive of the certainty and stability the international rules based architecture provides our exporters. Membership in the WTO means that we benefit from its rules and disciplines, and we can take a 'seat at the table' alongside trading partners large and small to pursue our trade interests.

The FSA is the second multilateral Agreement to be agreed by Members since the creation of the WTO in 1995. The FSA is a demonstration of the continued importance and ability – despite the many difficult obstacles and challenges - of WTO Members to seek and reach consensus. New Zealand stands to benefit from the impact that the FSA has in supporting the rules-based multilateral trade architecture that underpins our prosperity and economic well-being.

#### *Risks arising from Entry into Force*

When the FSA enters into force a 'sunset clause' is triggered (Article 12). This clause stipulates that the FSA will terminate four years after entry into force without the inclusion of additional comprehensive disciplines (however, importantly there is flexibility for Members to agree to change this termination timeline). The clause poses a risk to the permanence of the FSA should WTO Members fail to reach consensus on additional disciplines, namely those relating to subsidies that contribute to overcapacity and overfishing and related special and differential treatment measures for developing countries. However, given the momentum behind negotiations on the outstanding issues, the risk of termination of the FSA is not considered to outweigh the benefits of it entering into force.

### 4.3 No Entry into Force: Advantages and Disadvantages

No major advantages to New Zealand have been identified of the FSA not entering into force. There would be a very minor reduction in costs associated with reporting obligations.

Conversely, failure to enter into force would remove the potential positive environmental and economic impacts for New Zealand. It would maintain the status quo globally of subsidy programmes and related policies which fuel the current state of decline of the world's fish stocks.

Finally, there would be a detrimental impact on the reputation of New Zealand if it were not to accept the Agreement after championing it for so long, and on the credibility of the WTO more broadly if the FSA was to fail to enter into force.

### 4.5 Overall assessment

On balance, the advantages for New Zealand of the Agreement entering into force outweigh the disadvantages.

## 5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

Due to New Zealand's general and long-held policy practice of not providing direct subsidies to our fishing industry, and to our effective fisheries management practices, ongoing compliance with the legal obligations arising from the FSA will largely relate to reporting and transparency obligations. A full analysis of the legal obligations is included below.

New Zealand's ratification of the FSA will not apply to Tokelau, and Tokelau was not included within New Zealand's earlier ratification of the Marrakesh Agreement establishing the WTO.

### 5.1 Scope and Definitions

The scope of the Agreement is confined to (Article 1):

- (1) subsidies (as defined in the WTO Agreement on Subsidies and Countervailing Measures (ASCM));
- (2) that are specific (as defined in the ASCM);
- (3) to marine wild capture fishing and fishing related activities at sea.

**Subsidy:** The ASCM provides that a subsidy exists where there is a financial contribution by a government (or any public body) which confers a benefit. Financial contributions can include direct transfers of funds, such as grants, as well as other forms including revenue forgone, such as tax breaks.

Article 1 Footnote 3 also notes that a subsidy shall be attributable to the WTO Member conferring it, regardless of the flag or registry of any vessel involved, or the nationality of the recipient.

**Specificity:** For a subsidy to be subject to the ASCM, it must also be 'specific' to an industry or enterprise, or to a group of industries or enterprises, or to a particular region. A subsidy is also deemed to be specific if it is contingent on export performance, or on the use of domestic over imported goods.

**Marine wild capture fishing and fishing related activities at sea:** For greater clarity, the FSA excludes aquaculture and inland fisheries from the scope of the Agreement, and government-to-government payments under fisheries access agreements are not deemed to be subsidies within the scope of the Agreement. The exclusion of government-to-government payments is of interest to New Zealand, as these forms of access arrangements to fishing are used by Pacific partners and contribute significantly to economic resilience and to the ability to sustainably manage fisheries resources.

Article 2 defines five terms used in the FSA: fish, fishing, fishing related activities, vessel, and operator. The definitions of all of these terms, apart from the definition of "operator", are taken from the Port State Measures Agreement.<sup>11</sup>

**5.2 Prohibitions Prohibition on subsidies contributing to Illegal, Unreported, and Unreported Fishing (IUU):** Article 3 introduces the first of three main prohibitions; providing that no Member shall grant or maintain any subsidy to a vessel or operator engaged in IUU fishing.

The FSA refers to the International Plan of Action to Prevent, Deter and Eliminate IUU Fishing from the FAO to define IUU. As an example, this includes fishing activities:

- in the waters under another State's jurisdiction without permission of that State;
- which have not been reported (or misreported) to the relevant national authority; or
- conducted in a manner that is not consistent or contravenes management measures of a particular Regional Fisheries Management Organization or Arrangement.

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<sup>11</sup> New Zealand is a party to the Port State Measures Agreement.

Article 3.2 outlines the entities **who can make an IUU determination (consistent with other international agreements)**<sup>12</sup>. These are the coastal Member for areas under its jurisdiction, the flag State Member for vessels flying its flag, or a Regional Fisheries Management Organization or Arrangement (RFMO/A) for areas and species under its competence.

This prohibition serves as a further deterrent and consequence of IUU fishing, as a means to greater protect the sustainability of fisheries resources. It is complementary to existing agreements and arrangements that aim to determine, penalise and reduce instances of IUU fishing, such as the United Nations Fish Stocks Agreement 1995 and the FAO Compliance Agreement 1993.

New Zealand's Fisheries Act 1996 prescribes the legislative framework for New Zealand fisheries management within New Zealand fisheries waters. This includes stringent controls on fishing activities within New Zealand fisheries waters and on New Zealand flagged vessels and nationals operating on the high seas and imposes a system of offences and penalties. Other New Zealand legislation relevant to addressing IUU fishing includes the Antarctic Marine Living Resources Act 1981 and the Ships Registration Act 1992.

New Zealand's activity to combat IUU fishing is guided by the *New Zealand Plan of Action to Prevent, Deter and Eliminate IUU Fishing* and the *Maritime Security Strategy 2020*.

**The FSA includes various procedural steps** which must be respected by a coastal Member in making a finding of IUU. These include basing the determination on relevant factual information, notification to the flag State Member of the initiation of the investigation, providing opportunity to exchange information, and notification of the determination to the other Member and to the Committee on Fisheries Subsidies established by the FSA (Article 3.3(a)-(b)).

Other related obligations pertaining to subsidizing Members include: obliging them to take account of the severity of the IUU offence in applying the subsidy prohibition (Article 3.4); notify the measures taken to withdraw the subsidy (Article 3.5) and take into account information on IUU provided by a port State Member (Article 3.6).

All Members must also have laws, regulations or administrative procedures in place to remove subsidies to vessels or operators that have been found to engage in IUU (Article 3.7).

**Prohibition on subsidies regarding overfished stocks:** Article 4 prohibits the granting or maintaining of subsidies for fishing or fishing related activities regarding overfished stocks.

As under the UN Convention on the Law of the Sea and the UN Fish Stocks Agreement, the responsibility for determining whether the fish stock is overfished lies with coastal States for areas under their jurisdiction, or Regional Fisheries Management Organization or Arrangement in areas and for species under its competence (Article 4.2).

Article 4 does permit in certain circumstances, the granting of subsidies to fishing regarding an overfished stock. These subsidies must only be implemented to rebuild the stock to a biologically sustainable level (Article 4.3).

This prohibition on subsidies to overfished stocks seeks to eliminate subsidies to fishing efforts when stocks are determined to be in this state to prevent the further deterioration of the stock, and to encourage effective stock recovery measures.

**Prohibition on subsidies provided to fishing in the high seas:**

Article 5.1 prohibits subsidies being granted to fishing and fishing related activities in areas outside of the jurisdiction of a coastal Member (or a coastal non-Member), and outside the areas of the competence of an Regional Fisheries Management Organization or Arrangement (that is, in the unregulated high seas).

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<sup>12</sup> The UN Convention on the Law of the Sea and the UN Fish Stocks Agreement codify these roles and rights. New Zealand is a signatory of both agreements.

In the high seas, there are no current legally binding measures for sustainable management and no capacity to limit subsidies so that they do not lead to over-exploitation, meaning the inclusion of this discipline is particularly impactful for the sustainability of the oceans.

### 5.3 Special Care and Due Restraint Clauses

**‘Due Restraint’ clauses:** Article 5 requires Members to take ‘special care and exercise due restraint’ when granting subsidies (1) to vessels not flying that Member’s flag (Article 5.2), and (2) for fishing activities where the status of the stock is unknown (Article 5.3).

### 5.4 Special and Differential Treatment

The FSA includes a number of clauses granting appropriate and effective special and differential treatment for developing country and least developed country Members (LDC).

These include two separate implementation periods that exempt developing country Members (including LDCs) from the prohibitions on subsidies for IUU fishing and overfished stocks and from related dispute settlement provisions for up to two-years from entry into force (Articles 3.8 and 4.4).

Article 6 requires Members to exercise due restraint when raising matters involving an LDC Member, and to take into account that Member’s specific situation when exploring solutions to such matters.

### 5.5 Technical Assistance and Capacity Building

Article 7 creates a voluntary WTO funding mechanism to provide targeted technical assistance and capacity building assistance to developing country Members to support them in the implementation of the new obligations arising from the FSA. Contributions to this fund will be on a voluntary basis. New Zealand made a contribution of \$160,000 to this fund early in its development.

### 5.6 Notification and Transparency

**Fisheries-related information in Subsidy Notifications:** Article 8 requires Members to provide additional fisheries-related information as part of their existing reporting obligations every two years under the ASCM. This includes providing information on the type or kind of fishing activity being subsidised (Article 8.1(a)); and where possible, to provide information on stock status and conservation measures for the relevant fish stock, fleets and vessels benefitting from the subsidy, and catch data for the fishery where the subsidy is provided (Article 8.1(b)(i)-(v)).

**IUU Notification:** Article 8.2 provides that Members must provide a list of vessels and operators found to have engaged in IUU fishing each year.

**Notification to the Committee on Fisheries Subsidies:** All Members must inform the Committee:

- one year after entry into force, of the measures taken to implement and administer the FSA, and if these change, to inform the Committee of these changes (Article 8.3);
- one year after entry into force, of its fisheries regime (Article 8.4);
- upon entry of the FSA, any Regional Fisheries Management Organization or Arrangement to which they are party to (Article 8.6).

Members may request further information on these notifications, and the responding Member shall respond as quickly as possible (Article 8.5).

New Zealand has been a longstanding advocate for greater transparency of global fisheries subsidies. Notification and transparency requirements are an important inclusion to assist in the global monitoring of the level of fisheries subsidies, understanding of fisheries practices, and shared knowledge on the status of fisheries stocks to WTO Members, among other benefits.

## 5.7 Institutional Arrangements

**Committee on Fisheries Subsidies:** The FSA establishes a WTO Committee on Fisheries Subsidies composed of representatives from each Member, with an elected Chair. The Committee must meet not less than twice a year, examine information provided under Articles 3-8 every two years, and review the implementation and operation of the FSA every year (Article 9.1 - 9.3).

**Review of the Agreement:** Article 9.4 allows for the monitoring of the FSA through a review that will be conducted five years after entry into force, and every three years thereafter.

## 5.8 Final Provisions

**Disaster Exemption:** Article 11.1 provides an exemption to allow subsidies to be granted for disaster relief, as long as the subsidy is limited to:

- the relief of a particular disaster;
- the affected geographical area;
- a specified period of time; and
- in the case of reconstruction subsidies, restoring the affected fishery or the affected fleet to its pre-disaster level.

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

## 5.9 Termination of FSA if comprehensive disciplines not adopted

**Sunset Clause:** Article 12 provides that if comprehensive disciplines are not adopted within four years of entry into force, the FSA is terminated unless WTO Members decide otherwise.

Comprehensive disciplines are not defined in the text, however the covering Ministerial decision (WT/MIN(22)/33 WT/L/1144) sets out that these include disciplines relating to overcapacity and overfishing and special and differential treatment.

## 5.10 Dispute Settlement

The FSA does not contain a bespoke dispute resolution mechanism, rather any differences regarding the FSA would be subject to the existing WTO mechanism set out in Articles XXII and XXIII of the GATT 1994 and the WTO Dispute Settlement Understanding (DSU). This means that if another WTO Member considers that New Zealand has not complied with the obligations set out in the FSA, that Member could make a complaint under the WTO DSU.

## 5.11 Reservations

No reservations may be made in respect of any of the provisions.

# 6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

New Zealand's current practice,<sup>13</sup> administrative procedures and regulatory settings align with the FSA and therefore there are no legislative or regulatory implications arising from New Zealand's acceptance of the Protocol Amending the 1994 Marrakesh Agreement Establishing the World Trade Organization to include the Agreement on Fisheries Subsidies.

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<sup>13</sup> This includes the extent to which we do not provide subsidies, robust fisheries management system, and generally well-assessed stocks.

## **7 Economic, social, cultural and environmental costs and effects of the treaty action**

### **7.1 Economic effects**

The disciplines are expected to provide modest but net positive benefits for the New Zealand economy, largely from improved equity for our unsubsidised fishing industry competing in international markets and fisheries. These benefits are difficult to model given data constraints, and there is no economic modelling for New Zealand available.

The net economic impacts are likely to grow over time if further disciplines are introduced following future negotiations, particularly subsidies relating to overcapacity and overfishing. These types of subsidies constitute the largest proportion of global subsidies to the fishing industry and contribute significantly to increasing the capacity of fishing fleets at sea, putting additional pressure on fish stocks whose exploitation would not be economically viable under normal economic conditions.

### **7.2 Social effects**

Through contributing to the sustainability of global fish stocks, the FSA would contribute to ensuring livelihoods of those with fisheries interests are supported – including to Pacific partners.

### **7.3 Effects on Māori**

Iwi Māori directly own close to 40 percent of domestic fish quota and through that ownership indirectly influence a much larger proportion of fishing activity through trading of the annual catch entitlements that quota shares generate. The commercial benefits of the FSA are likely to accrue to the asset values of quota and improve the international competitiveness of Maori-owned fishing businesses.

### **7.4 Environmental effects**

As set out in Section 4, the entry into force of the FSA would have significant sustainability benefits for New Zealand. If New Zealand does not ratify the FSA, it will miss the opportunity to make a domestic contribution to global environmental and sustainability outcomes. As already noted, the implementation of the FSA is expected to improve the sustainability of global fisheries resources, contributing to meeting UN SDG 14.6.

## **8 The costs to New Zealand of compliance with the treaty**

The costs to the New Zealand government of domestic measures to implement the FSA (namely initial notification and reporting obligations) are likely to be low, and would be absorbed into existing baselines. There are no additional compliance costs specifically associated with the obligations.

Finally, any funding to the WTO Funding Mechanism to assist with implementation of the FSA is on a voluntary basis, and any future New Zealand contribution would be met from existing budgets.

## **9 Completed or proposed consultation with the community and parties interested in the treaty action**

There has been on-going engagement with Māori, industry and other stakeholders throughout the course of negotiations. Stakeholders have advocated for the pursuit of high ambition subsidy reform that would achieve sustainability objectives, and improvements in competitive operating and trading conditions for our commercial fisheries industry.

During the negotiation process, MFAT and MPI worked together closely, and both agencies sought feedback on our negotiating position from a range of agencies, including the Department of Prime Minister and Cabinet, the Ministry of Business, Innovation and Employment, Treasury, and Te Puni Kōkiri.

Treaty of Waitangi/Te Tiriti o Waitangi partner groups were regularly engaged throughout the negotiations. Te Taumata particularly expressed strong support for the Agreement and the benefits it would bring to Māori fishery businesses.

Following the conclusion of negotiations in June 2022, consultation has been carried on in relation to New Zealand's domestic acceptance of the FSA with a range of agencies (as above) and industry stakeholders, this included Seafood New Zealand and Te Ohu Kaimoana. Stakeholders acknowledged that while the Agreement does not cover all forms of subsidies initially hoped for, the FSA is a constructive first step forward in the right direction.

## **10 Subsequent protocols and/or amendments to the treaty and their likely effects**

As stated above, negotiations at MC12 failed to reach consensus on two additional significant issues; subsidies that contribute to overcapacity and overfishing, and related special and differential treatment measures. Instead, Members agreed that negotiations on these issues would continue and if agreed, be included in the FSA as an amendment or other form in the future.

To promote timely negotiations on these critical issues, Members also agreed to include a clause stipulating that the entire FSA would terminate four years after entry into force without the inclusion of additional comprehensive disciplines (unless agreed otherwise by Members). This means that, if additional disciplines are agreed, an amendment to include these provisions will be required within the next five to seven years (dependent on the time taken for the FSA to enter into force).

The inclusion of such disciplines would bring significant additional benefit to the FSA. Subsidies relating to overcapacity and overfishing constitute a majority of the world's fisheries subsidies and contribute significantly to the depletion of the world's fish stocks. Such disciplines would therefore increase the environmental and commercial benefits of the FSA outlined previously.

Conversely, a risk remains to the permanance of the FSA if these disciplines are not able to be agreed, and if Members fail to reach consensus on the continuance of the FSA.

Any future amendments to the FSA would be subject to New Zealand's domestic treaty-making requirements, including the parliamentary treaty examination process.

## **11 Withdrawal or denunciation provision in the treaty**

As an Annex to the Marrakesh Agreement, any withdrawal from the proposed treaty action would occur under Article XV of that Agreement. This includes written notice, and would take place upon the expiration of six months from the date on which written notice is received by the WTO Director General.

# Annex 1: The Agreement on Fisheries Subsidies



WORLD TRADE  
ORGANIZATION

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

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.

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**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.<sup>1</sup>
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.

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<sup>1</sup> 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**

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#### **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.<sup>1, 2, 3</sup>

#### **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.

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

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

<sup>3</sup> 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 FISHING<sup>4</sup>**

3.1 No Member shall grant or maintain any subsidy to a vessel or operator<sup>5</sup> 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<sup>6,7</sup>:

- (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 determination<sup>8</sup> 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 information<sup>9</sup> 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").

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<sup>4</sup> "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.

<sup>5</sup> 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.

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

<sup>7</sup> 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.

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

<sup>9</sup> 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 sanction<sup>10</sup> 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.<sup>11</sup>

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.

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<sup>10</sup> 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.

<sup>11</sup> 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<sup>12,13</sup>: 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<sup>12,13</sup>:
  - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared<sup>14</sup> 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.<sup>15</sup>

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.

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<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.<sup>16</sup> 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.

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<sup>16</sup> 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.<sup>17</sup>

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement<sup>18</sup> 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 disaster<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup>

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.

<sup>17</sup> 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.

<sup>18</sup> 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.

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

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

<sup>21</sup> 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.

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