PROTOCOL

de amendare a Acordului de la Marrakech privind constituirea Organizației Mondiale a Comerțului

Geneva 17 iunie 2022

COPIE CERTIFICATĂ
TEXT ÎN LIMBA ENGLEZĂ

WORLD TRADE ORGANIZATION

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

22 June 2022

(22-4789)

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.

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[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 FISHING[4]

3.1 No Member shall grant or maintain any subsidy to a vessel or operator[5] 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 determination[8] 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[9] 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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[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 sanction[10] 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 shared[14] 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.

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[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 prejudge (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 Agreement[18] 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[19] 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.

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[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.

WORLD TRADE ORGANIZATION

Reference: WLI/100

13 July 2022

PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION, AGREEMENT ON FISHERIES SUBSIDIES, DONE AT GENEVA ON 17 JUNE 2022

TRANSMISSION OF CERTIFIED TRUE COPY

I have the honour to furnish herewith a certified true copy of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization, Agreement on Fisheries Subsidies, done at Geneva on 17 June 2022 (the "Protocol") in accordance with paragraph 5 of the Protocol.

Pursuant to paragraph 4 of the Protocol and Article X:3 of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), the Protocol shall take effect for the Members that have accepted it upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it.

In accordance with paragraph 1 of the Protocol, Annex 1A to the WTO Agreement shall, upon entry into force of the Protocol pursuant to its 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.

Ngozi Okonjo-Iweala
Director-General

22-5143

WT/Let/1580

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Prin prezenta, confirm că textul alăturat este copia certificată a Protocolului de amendare a Acordului de la Marrakech privind constituirea Organizației Mondiale a Comerțului, întocmit la Geneva, la 17 iunie 2022, originalul căreia este depozitat la Arhiva Tratatelor a Ministerului Afacerilor Externe.

Violeta AGRICI,
Șefa Direcției Drept Internațional a
Ministerului Afacerilor Externe


MINISTERUL AFACERILOR EXTERNE AL REPUBLICII MOLDOVA


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