

ANNEX C – FISHERIES SUBSIDIES

Textual Proposals	Chairman's Text (TN/RL/W/213)	Delegations' Comments on Chairman's Text																				
<u>PROHIBITION AND SCOPE/COVERAGE</u>																						
<p>[[3bis1. Except as provided for in Article 27 bis and Annex VIII of this Agreement, subsidies¹ within the meaning of Article 1 of this Agreement that confer a benefit² directly or indirectly on any natural or legal person engaged in the harvesting, processing, transport, marketing or sale of the fish and fisheries products listed in Annex IX of this Agreement (“fisheries subsidies”) shall be prohibited.</p> <p>ANNEX IX: PRODUCT COVERAGE FOR FISHERIES SUBSIDIES</p> <p>1. The fish and fisheries products referred to in Article 3 bis and related Articles refer to:</p> <table border="0" style="margin-left: 20px;"> <tr> <td colspan="2">HS Chapters/Code/Headings</td> </tr> <tr> <td>HS 0509</td> <td>(sponges)</td> </tr> <tr> <td>HS 0511.91</td> <td>(fish unfit for human consumption)</td> </tr> <tr> <td>HS 03</td> <td>(fish and fish products)</td> </tr> <tr> <td>HS 1504.10</td> <td>(fishoil)</td> </tr> <tr> <td>HS 1504.20</td> <td>(fishoil)</td> </tr> <tr> <td>ex HS 1603</td> <td>(juices and extracts of meat and fish)</td> </tr> <tr> <td>HS 1604</td> <td>(prepared or preserved fish)</td> </tr> <tr> <td>HS 1605</td> <td>(prepared or preserved crustaceans and molluscs)</td> </tr> <tr> <td>HS 2301.20</td> <td>(fishmeal)</td> </tr> </table> <p>¹We note that Article 1.2 of the ASCM provides that a subsidy shall be subject to the provisions of Part II only if such a subsidy is specific in accordance with the provisions of Article 2. [We] continue[] to be concerned that some generally available (non-specific) subsidies could directly contribute to overcapacity and overfishing, for example a generally available fuel subsidy. We look forward to discussing textual options for addressing this concern.</p> <p>²The term benefit is used here in the sense of Article 1.1(b) of</p>	HS Chapters/Code/Headings		HS 0509	(sponges)	HS 0511.91	(fish unfit for human consumption)	HS 03	(fish and fish products)	HS 1504.10	(fishoil)	HS 1504.20	(fishoil)	ex HS 1603	(juices and extracts of meat and fish)	HS 1604	(prepared or preserved fish)	HS 1605	(prepared or preserved crustaceans and molluscs)	HS 2301.20	(fishmeal)	<p style="text-align: center;">AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES</p> <p>3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:</p> <p>[...]</p> <p style="text-align: center;">(c) subsidies referred to in Article I of <u>Annex VIII</u>.</p> <p>[...]</p> <p>⁹This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited. <u>It is recognized that in a case of violation of the prohibition in Article 3.1(c) and Article I of Annex VIII, countermeasures may take the form of suspension of access of fishing or service vessels to port facilities for landing, transshipping or processing fish.</u></p> <p>¹⁰This expression is not meant to allow countermeasures that are disproportionate in light of the fact that the subsidies dealt with under these provisions are prohibited. <u>It is recognized that in a case of violation of the prohibition in Article 3.1(c) and Article I of Annex VIII, countermeasures may take the form of suspension of access of fishing or service vessels to port facilities for landing, transshipping or processing fish.</u></p> <p>[...]</p> <p style="text-align: center;">ANNEX VIII</p> <p>I.1 Except as provided for in Articles II and III, or in the exceptional case of natural disaster relief⁷⁷, the</p>	<p>With regard to the scope of the prohibition in general, some delegations consider that the Chairman's text is far too ambitious, while for other delegations the text falls considerably short of their expectations.</p> <p>Certain delegations view the list of proposed prohibitions as far too broad. In their view, it encompasses certain types of subsidies that do not directly contribute to overcapacity and overfishing, in particular where the subsidising Member has sound fisheries management measures in place. Concerns expressed in this regard include that in the view of some delegations even certain environmentally-beneficial subsidies that either help to reduce, or have no impact on, capacity would be covered by the prohibition. Some delegations consider that even subsidies to vessel construction and repair can be allowed under certain conditions that would prevent the development of overcapacity.</p> <p>Other delegations continue to prefer a top-down (broad ban) approach, rather than the bottom-up approach in the draft text, but have indicated that they can accept the latter approach so long as the ultimate scope of the prohibition is sufficiently broad. In this regard, some of these delegations consider that the scope of the proposed prohibition is too narrow. They advocate extending it to cover additional subsidies, especially to activities further downstream. These delegations also view some of the drafting in the proposed list of prohibited subsidies as too loose, considering that it leaves open potential loopholes that need to be closed in any final text.</p> <p>Another group of delegations view the proposed list of prohibited subsidies as generally reflecting an appropriately high level of discipline. In their view, the text respects the mandate from Ministers by striking the right balance in proposing for prohibition the</p>
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<p>this Agreement.]]</p> <p>[[1.1 The Annex covers any fisheries subsidy, i.e. subsidies as defined in Article 1.1 of the SCM Agreement that are granted to enterprises engaged in marine wild capture fisheries.</p> <p>1.2. Fisheries subsidies shall encompass any subsidy programme and/or the disbursements made under such programme as well as ad hoc subsidies.</p> <p>2.1 The following subsidies shall be prohibited :</p> <p>(a) Subsidies for the construction of new fishing vessels,</p> <p>(b) Subsidies for the renovation of existing vessels, and</p> <p>(c) Subsidies for the permanent transfer of fishing vessels to other countries including through the creation of joint ventures with partners of those countries.]]</p> <p>[[1. The following subsidies which confer a benefit⁵ and which are specific, as set out in Articles 1 and 2 of the ASCM, shall be prohibited:</p> <p>1.1. Any subsidy granted for the acquisition, building, maintenance, repair or up-grading of fishing vessels⁶ exceeding 15 metres overall length, including any technical or electronic equipment⁷ onboard the vessel.</p> <p>⁵The provisions set out in Article 14 of the ASCM shall apply whenever an assessment of whether a subsidy confers a benefit.</p> <p>⁶For the purpose of this Annex, fishing vessels means any vessel intended for use for the purpose of commercial exploitation of fishing resources, including fish processing vessels and vessels engaged</p>	<p>following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, shall be prohibited:</p> <p>(a) Subsidies the benefits of which are conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels⁷⁸ or service vessels⁷⁹, including subsidies to boat building or shipbuilding facilities for these purposes.</p> <p>(b) Subsidies the benefits of which are conferred on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners.</p> <p>(c) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities.</p> <p>(d) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities).</p> <p>(e) Income support for natural or legal persons engaged in marine wild</p>	<p>subsidies that they consider to be most closely linked to overcapacity and overfishing.</p> <p>Regarding specific types of subsidies included in the various subparagraphs of the list, subparagraph (c), covering subsidies to operating costs, and subparagraph (d), covering subsidies to port infrastructure, including in- or near-port processing facilities have attracted the most attention.</p> <p>Concerning subsidies to operating costs, including for fuel, bait and ice, opinions vary widely. A number of delegations – including certain developed and developing Members – do not consider that such subsidies contribute to overcapacity. Of particular concern to many delegations in this regard is the proposed prohibition of fuel subsidies. In their view, prohibiting fuel subsidies would be unacceptable, as it would effectively deprive their fishers of their livelihood by making it impossible for them to continue fishing. In this context, developing country delegations emphasize in particular the importance to the achievement of their development goals of fuel subsidies in the fisheries sector. Similarly, certain developed country delegations also emphasize the importance to their coastal fishing communities of fuel subsidies. All of these delegations take the view that, in well-managed fisheries, fuel subsidies will have no impact on overfishing.</p> <p>Other delegations, however, consider that any prohibition that omits fuel subsidies would be unacceptable. In their view, a prohibition that did not cover fuel subsidies would be ineffective in disciplining subsidies that contribute to overcapacity and overfishing, and thus would be inconsistent with the mandate from Ministers. They consider fuel subsidies to be at the very heart of the problem of overfishing, as they allow boats to stay on the water longer, without regard for the true costs and benefits involved, than would be possible without the subsidies.</p> <p>With respect to subsidies to port infrastructure,</p>

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<p>in transshipment. ⁷This comprises, <i>inter alia</i>, engines, fishing gear, fish-processing machinery or any other equipment onboard the vessel. The prohibition does not cover the installation of equipment for safety or for control and enforcement purposes. Neither does the prohibition cover equipment fitted for the purpose of reducing environmentally harmful emissions.]]</p> <p>[[1.1 This Annex provides for specific provisions regarding fisheries subsidies and it is an integral part of the Agreement on Subsidies and Countervailing Measures (ASCM). 1.2 This Annex shall not apply to inland fisheries¹ and to aquaculture.²</p> <p>1.3 This Annex covers any subsidy — as defined in Article 1 of the ASCM — given to or on behalf of any company and/or person linked in fact or in law, directly or indirectly³, to harvesting activities of capture fisheries ("fishery subsidy"). Fisheries subsidies shall encompass any subsidy programme and/or the disbursement made under such programme.</p> <p>1.3.1 In case of a government-to-government payment for access by foreign vessels to fishing resources of a developing country's maritime jurisdiction⁴ or to quotas or any other rights established by any regional fishery management organization or arrangement ("access rights"), a fishery subsidy shall be deemed to exist if a benefit is conferred in the onward transfer of those access rights from the paying government.</p> <p>1.3.2 "Public services of fisheries resource management" shall not be considered a fishery subsidy.⁵</p> <p>2.1 A Member shall neither grant nor maintain any fishery subsidy.</p> <p>¹"Inland fisheries" are fisheries which are carried out in freshwater or estuaries of a Member and whose target species are those</p>	<p>capture fishing.</p> <p>(f) Price support for products of marine wild capture fishing.</p> <p>(g) Subsidies arising from the further transfer, by a payer Member government, of access rights that it has acquired from another Member government to fisheries within the jurisdiction of such other Member.⁸⁰</p> <p>(h) Subsidies the benefits of which are conferred on any vessel engaged in illegal, unreported or unregulated fishing.⁸¹</p> <p>1.2 In addition to the prohibitions listed in paragraph 1, any subsidy referred to in paragraphs 1 and 2 of Article 1 the benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are in an unequivocally overfished condition shall be prohibited.</p> <p>⁷⁷ Subsidies referred to in this provision shall not be prohibited when limited to the relief of a particular natural disaster, provided that the subsidies are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery, and/or the affected fleet to its pre-disaster state, up to a sustainable level of fishing capacity as established through a science-based assessment of the post-disaster status of the fishery. Any such subsidies are subject to the provisions of Article VI.</p> <p>⁷⁸ For the purposes of this Agreement, the term "fishing vessels" refers to vessels used for marine wild capture fishing and/or on-board processing of the products thereof.</p> <p>⁷⁹ For the purposes of this Agreement, the term "service vessels" refers to vessels used to tranship the products of marine wild capture fishing from fishing vessels to on-shore facilities; and vessels used for at-sea refuelling, provisioning and other servicing of fishing vessels.</p>	<p>some delegations – including certain developed and developing Members – consider that all subsidies to port infrastructure should fall outside of the prohibition. Many of these delegations question whether there is any link between infrastructure subsidies and overcapacity or overfishing, and thus consider that this proposed prohibition goes beyond the mandate from Ministers. Some of these delegations also point to the difficulty of distinguishing the provision of "general infrastructure", which is not a subsidy covered by the SCM Agreement, from subsidies for infrastructure "exclusively or predominantly for activities related to marine wild capture fishing", which are proposed for prohibition, particularly where the subsidised infrastructure serves activities in addition to marine wild capture fishing. In their view, this uncertainty is a further reason why such subsidies should not be prohibited. A number of developing country delegations have indicated that subsidies to port infrastructure, including in- or near-port processing facilities, are essential to their economic development. They emphasize the economic linkages of fish processing activities, including job creation and increases in the level of technology in the sector. Certain delegations (including some developed country delegations) also consider that subsidies to fishing port infrastructure are necessary to support communities and provide employment in remote areas, where the populations tend to be economically and socially disadvantaged.</p> <p>Other delegations, however, strongly believe that the infrastructure subsidies referred to in the Chairman's text should be prohibited as proposed. In their view, the prohibition is drafted sufficiently narrowly to capture only infrastructure subsidies directly targeted to fishing activities, such that the question of their specificity would not be in doubt. Furthermore, they consider that such a prohibition is necessary, as infrastructure subsidies account for a very high percentage of all subsidies to the fisheries sector, and relieve the fishing industry of a substantial cost that otherwise it would need to bear. They thus consider</p>

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<p>that spend all of their life-cycle therein.</p> <p>²"Aquaculture" is the farming of aquatic organisms, including fish, molluscs and crustaceans, provided that no capture fisheries is used to feed raised fish or is farmed.</p> <p>³The term "directly or indirectly" is used in this Annex in the same sense as it is used in paragraph 1 of Article XVI of GATT 1994.</p> <p>⁴"Maritime jurisdiction" encompasses the Territorial Sea and the Exclusive Economic Zone, which are defined in the United Nations Convention of the Law of the Sea (UNCLOS).</p> <p>⁵"Public services" are all services supplied in the exercise of governmental authority, which is carried out neither on a commercial basis nor in competition with other services suppliers. "Public services of fisheries resource management" are any governmental public service supplied with the objective of improving the management of fisheries resources.]]</p> <p>[[1. Except as otherwise provided in this Annex, a subsidy¹ that confers a benefit on enterprises engaged in the harvesting of marine wild capture fisheries shall be prohibited.²</p> <p>¹"Subsidy" as used in this Annex is a subsidy within the meaning of paragraph 1 of Article 1 of the Agreement on Subsidies and Countervailing Measures (ASCM). A subsidy subject to this Annex must be specific within the meaning of Article 2 of the ASCM.</p> <p>²"Harvesting" includes the on-vessel processing of fish and transport of fish from one vessel to another or from a vessel to shore.]]</p> <p>[[1. The following subsidies¹², granted for enterprises engaged in harvesting of marine¹³ wild fish, shall be prohibited, except as otherwise provided in this Annex:</p> <p>(a) subsidies for the acquisition, and construction of fishing vessels, unless:</p> <p>(i) they are granted for the replacement of fishing capacity following a natural and environmental disaster where</p>	<p>⁸⁰Government-to-government payments for access to marine fisheries shall not be deemed to be subsidies within the meaning of this Agreement.</p> <p>⁸¹The terms "illegal fishing", "unreported fishing" and "unregulated fishing" shall have the same meaning as in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization.</p>	<p>that these subsidies contribute directly to overfishing, and that to leave them out of the prohibition would be contrary to the mandate.</p> <p>Concerning the provision allowing subsidies to restore a fishery following a natural disaster, some delegations have suggested broadening this so as to allow subsidies following other kinds of disasters, for example man-made and environmental disasters, and economic crises. Other delegations, however, consider that the drafting should be tightened to prevent the creation of overcapacity using subsidies.</p> <p>Another provision commented upon by certain delegations was the proposed prohibition of subsidies in the form of income and price support. Some delegations consider that these forms of subsidies do not contribute to overcapacity, and they regard them as essential components of their social welfare/safety net programmes. Other delegations agree that such subsidies should be prohibited, but seek a clarification of the relationship of that proposed prohibition with the horizontal disciplines of the SCM Agreement.</p> <p>With respect to the prohibition of subsidies in respect of "unequivocally overfished" fisheries, some delegations consider this provision to be too wide-ranging, and to impose an unclear obligation. They question both the meaning of the term "unequivocally overfished", and by whom such a determination in respect of a given fishery would be made. They further consider that in any case, this provision is not necessary given that the horizontal disciplines of the SCM Agreement would apply, and given the general discipline in Article IV of the Chairman's text.</p> <p>Other delegations consider that this provision is a crucial element of the proposed disciplines. In their view, prohibiting subsidies in respect of overfished fisheries is necessary given that the proposed prohibition takes the form of a positive list. They consider that all Members can agree that no subsidies</p>

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<p>fleet capacity has been reduced so that a capacity is restored to the proper level not exceeding its pre-disaster state; or</p> <p>(ii) they are granted as incentives¹⁴ for reducing existing fishing capacity, where the gross tonnage of the new vessel is reduced by at least 50 per cent of the sum of the gross tonnage of the withdrawn vessels in the same fishery category¹⁵; and there are in place fisheries management control measures, including enforcement mechanisms, designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups.</p> <p>(b) subsidies for the vessel modification, unless:</p> <p>(i) there is no increase in gross tonnage, volume of fish hold, and engine power of the fishing vessel; or</p> <p>(ii) the modification is undertaken for the improvement of crew safety or on-board accommodation to comply with national or international standards, without increasing volume of fish hold and engine power of the fishing vessel.</p> <p>(c) subsidies granted for shipbuilding yards contingent upon the construction of fishing vessels;</p> <p>(d) subsidies for promoting a permanent transfer of fishing vessels to non-participants¹⁶ of regional fisheries management organizations¹⁷ as an attempt to avoid international rules and</p>		<p>should be allowed where a fishery already is overfished, and that the standard set by the draft text ("unequivocally overfished") is high – although some of them view it as too high. A number of delegations on all sides of the issue consider that the term "unequivocally overfished" should be clarified. In this regard, a proposal from three delegations (<i>see</i>, TN/RL/GEN/155/Rev.1) suggests amending this language in the Chairman's text to refer to fisheries "declared" to be overfished, in particular to take account of the situation in tropical waters.</p>

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<p>regulations of fishery operations; and</p> <p>(e) subsidies granted for a vessel engaged in illegal, unreported and unregulated fishing.¹⁸</p> <hr/> <p>¹²A subsidy subject to this Annex must be specific within the meaning of Article 2 of this Agreement.</p> <p>¹³The term "marine" includes both anadromous (e.g., salmon) and catadromous (e.g., eels) species that spend a significant part of their life cycle in saltwater.</p> <p>¹⁴Governmental support for vessel replacement, including construction or purchase of new vessels, is assumed as a form of such incentives.</p> <p>¹⁵The term "same fishery category" means a group of fishing operations targeting for the same species.</p> <p>¹⁶The term "non-participants" means the countries who are neither contracting parties nor cooperating non-contracting parties, entities or fishing entities.</p> <p>¹⁷The term "regional fisheries management organizations" mean regional or sub-regional fisheries management organizations or arrangements.</p> <p>¹⁸The term "illegal, unreported and unregulated fishing" shall be interpreted in accordance with the definition set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization (FAO).]]</p> <p>[[1.1 This Annex provides for specific provisions regarding fisheries subsidies and it is an integral part of the Agreement on Subsidies and Countervailing Measures (ASCM).</p> <p>1.2 A subsidy as used in this Annex is a subsidy within the meaning of paragraph 1 of Article 1 of the Agreement on Subsidies and Countervailing Measures (ASCM). A subsidy subject to this Annex must be specific, pursuant to Article 2 of the ASCM.</p> <p>1.3 This Annex shall not apply to inland fisheries¹ or to aquaculture.²</p> <p>1.4 This Annex covers any subsidy that confers a benefit to</p>		

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<p>or on behalf of any company and/or person linked in fact or in law, directly or indirectly³, to enterprises engaged in the harvesting of marine wild capture fisheries. Fisheries subsidies shall encompass any subsidy programme and/or the disbursement made under such programme.</p> <p>1.5 Harvesting includes the on-vessel processing of fish and transport of fish from one vessel to another or from a vessel to shore, but it does not include inland or on-shore processing or other post-harvest handling or activity.</p> <p>1.6 This Annex does not cover government-to-government payments to obtain access for a Member's distant water fishing fleet to fisheries resources within the territorial sea or exclusive economic zone of a developing country, or to quotas or other rights established by any regional fishery management organization (RFMO) or arrangement. The further transfer of such rights to the Member's fishing fleet is covered by this Annex but is not actionable under Article 3, provided that:</p> <ul style="list-style-type: none"> (a) a benefit is not conferred by the onward transfer of such rights to the Member's fishing fleet, in that the Member's fleet pays compensation comparable to the value of the access of the resource; (b) the access arrangements provide for compliance with applicable fishery management plans and for a science-based assessment and monitoring of the status of the fishery resources covered by the access arrangements; and (c) such payments are notified pursuant to Article 6 herein. <p>2.1 Except as provided in this Annex, and without prejudice to Article 3 of the ASCM, the following subsidies, within the meaning of Article 1 of the ASCM and this Annex, shall be prohibited within the meaning of Article 3 of the ASCM:</p>		

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<p>(a) subsidies granted, in law or in fact, whether solely or as one of several other conditions, for the purpose of vessel construction of any fishing vessel⁴;</p> <p>(b) subsidies granted, in law or in fact, whether solely or as one of several other conditions, for the purpose of modernization, renovation, repair or upgrading of existing fishing vessels, including engine or gear acquisition, any technical or electronic equipment⁵ onboard the vessel, and any other significant capital inputs to fishing;</p> <p>(c) subsidies granted, in law or in fact, whether solely or as one of several other conditions, for the purpose of fixed or variable operational costs of fishing vessels and fishing activities, including on-board processing;</p> <p>(d) subsidies granted, in law or in fact, whether solely or as one of several other conditions, for shipbuilding yards contingent upon the construction of fishing vessels;</p> <p>(e) subsidies granted, in law or in fact, whether solely or as one of several other conditions, relating to illegal, unreported and unregulated fishing,⁶ as well as to any fishing vessels flying "flags of convenience"; and</p> <p>(f) subsidies granted, in law or in fact, whether solely or as one of several other conditions, upon the transfer of fishing vessels to foreign owners, including through the creation of joint ventures with those countries.</p> <p>2.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1.</p> <p>2.3 Whenever a Member has reason to believe that a prohibited subsidy is being granted or maintained by another</p>		

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<p>Member as defined in Article 2.1 of this Annex and without prejudice to Article 3 of the ASCM, such Member may seek remedies in accordance with Article 4 of the ASCM.</p> <p>¹ "Inland fisheries" are fisheries which are carried out in freshwater or estuaries of a Member and whose target species are those that spend all of their life-cycle therein.</p> <p>² "Aquaculture" is the farming of aquatic organisms, including fish, molluscs and crustaceans, provided that no capture fisheries is used to feed raised fish or is farmed.</p> <p>³ The term "directly or indirectly" is used in this Annex in the same sense as it is used in paragraph 1 of Article XVI of GATT 1994.</p> <p>⁴ For the purpose of this Annex, fishing vessel means any vessel intended for use for the purpose of commercial exploitation of fishing resources, including fish processing vessels and vessels engaged in transshipment.</p> <p>⁵ This comprises, inter alia, engines, fishing gear, fish-processing machinery, fish-finding technology, refrigerators, machines for sorting or cleaning fish, or any other equipment onboard the fishing vessel. The prohibition does not cover the installation of equipment for safety or for control and enforcement purposes. Neither does the prohibition cover equipment fitted for the purpose of reducing environmentally harmful emissions.</p> <p>⁶ The term "illegal, unreported and unregulated fishing" shall be interpreted in accordance with the definition set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization (FAO).]]</p> <p>[[I.1 Except as provided for in Articles II and III, or in the exceptional case of natural disaster relief⁷, the following subsidies within the meaning of paragraph 1 of Article 1, to the extent they are specific within the meaning of paragraph 2 of Article 1, shall be prohibited:</p> <p>(a) Subsidies the benefits of which are conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels⁸ or</p>		

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<p>service vessels⁹, including subsidies to boat building or shipbuilding facilities for these purposes.</p> <p>(b) Subsidies the benefits of which are conferred on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners.</p> <p>(c) Subsidies the benefits of which are conferred on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities.</p> <p>(d) Subsidies in respect of, or in the form of, port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities).</p> <p>(e) Income support for natural or legal persons engaged in marine wild capture fishing.</p> <p>(f) Price support for products of marine wild capture fishing.</p> <p>(g) Subsidies arising from the further transfer, by a payer Member government, of access rights that it has acquired from another Member government to fisheries within the jurisdiction of such other Member.¹⁰</p> <p>(h) Subsidies the benefits of which are conferred on any vessel engaged in illegal, unreported or unregulated fishing.¹¹</p>		

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<p>I.2 In addition to the prohibitions listed in paragraph 1, any subsidy referred to in paragraphs 1 and 2 of Article 1 the benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are declared to be in an over fished condition shall be prohibited.</p> <p>⁷Subsidies referred to in this provision shall not be prohibited when limited to the relief of a particular natural disaster, provided that the subsidies are directly related to the effects of that disaster, are limited to the affected geographic area, are time-limited, and in the case of reconstruction subsidies, only restore the affected area, the affected fishery, and/or the affected fleet to its pre-disaster state, up to a sustainable level of fishing capacity as established through a science-based assessment of the post-disaster status of the fishery. Any such subsidies are subject to the provisions of Article VI.</p> <p>⁸For the purposes of this Agreement, the term "fishing vessels" refers to vessels used for marine wild capture fishing and/or on-board processing of the products thereof.</p> <p>⁹For the purposes of this Agreement, the term "service vessels" refers to vessels used to tranship the products of marine wild capture fishing from fishing vessels to on-shore facilities; and vessels used for at-sea refuelling, provisioning and other servicing of fishing vessels.</p> <p>¹⁰ Government-to-government payments for access to marine fisheries shall not be deemed to be subsidies within the meaning of this Agreement.</p> <p>¹¹The terms "illegal fishing", "unreported fishing" and "unregulated fishing" shall have the same meaning as in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal Unreported and Unregulated Fishing of the United Nations Food and Agricultural Organization.]]</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<u>GENERAL EXCEPTIONS</u>		
<p>[[3.1. The following subsidies are permitted:</p> <p>(a) Subsidies contingent upon a reduction in fishing capacity or that are provided for the specific purpose of mitigating the negative social and economic consequences of reductions in capacity;</p> <p>(b) Subject to a non increase in capacity, subsidies that are granted in the context of conservation measures, for product development, for modernisation of vessels including improved working conditions and safety on board, and subsidies that promote more environmentally friendly fishing operations.</p> <p>3.2. Subsidies covered by paragraph 1 of this Article shall not be subject to Article 2 of this Annex and Parts III and V of the SCM Agreement.]]</p> <p>[[Provided that they are notified in accordance with Article 25, nothing in Article 3 <i>bis</i> shall prevent the adoption of:</p> <p>(a) subsidies to aquaculture¹ activities, provided that there are no capture fisheries involved;</p> <p>(b) subsidies for vessel decommissioning programmes, provided that:</p> <p>(i) the vessels subject to such programmes are scrapped or</p>	<p>II. Notwithstanding the provisions of Article I, and subject to the provision of Article V:</p> <p>(a) For the purposes of Article I.1(a), subsidies exclusively for improving fishing or service vessel and crew safety shall not be prohibited, provided that:</p> <p>(1) such subsidies do not involve new vessel construction or vessel acquisition;</p> <p>(2) such subsidies do not give rise to any increase in marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn; and</p> <p>(3) the improvements are undertaken to comply with safety standards.</p> <p>(b) For the purposes of Articles I.1(a) and I.1(c) the following subsidies shall not be prohibited:</p> <p>subsidies exclusively for: (1) the adoption of gear for selective fishing techniques; (2) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing; (3) compliance with fisheries management regimes aimed at</p>	<p>Concerning the general exceptions, some delegations consider that many of the exceptions proposed are too narrowly defined and the conditions attached to them too restrictive. Some of these delegations consider that the fact that non-prohibited fisheries subsidies would remain actionable under the horizontal subsidy rules of the SCM Agreement would mitigate any negative effects that such subsidies might cause, such that the list of exceptions should be expanded and the conditionalities relaxed (or, some suggest, removed altogether). Other Members consider that the management conditionalities associated with the general exceptions alleviate the need for tailoring the exceptions narrowly. In their view, provided that properly-functioning fisheries management systems are in place, fisheries subsidies will make little contribution to overcapacity and overfishing. Other delegations seeking broader general exceptions suggest that all of the management requirements may not be necessary in respect of each exception, as in their view some of the subsidies covered by general exceptions have no possibility to contribute to overcapacity and overfishing.</p> <p>A number of other delegations, however, consider that for the disciplines to be effective any general exceptions must be limited in number and scope, and subject to strict conditionalities. While recognizing the need for certain general exceptions, including for capacity reduction programmes, environmental improvements, and transitional assistance for displaced fishworkers, these delegations consider that all subsidies to the fisheries sector, regardless of their expressed purpose, have the potential to circumvent the prohibition and contribute to overcapacity and overfishing. They thus consider that the approach to general exceptions in the Chairman's text is appropriate, and that if anything the drafting should be tightened. In this regard, some delegations made detailed drafting suggestions to close perceived potential loopholes, for example to tighten what they consider to be the overly-</p>

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>otherwise permanently and effectively prevented from being used for fishing anywhere in the world;</p> <p>(ii) the fish harvesting rights associated with such vessels are permanently revoked and may not be reassigned;</p> <p>(iii) the owners of such vessels are required to relinquish any claim associated with such vessels that could qualify such owners for any present or future harvesting rights in any fishery; and</p> <p>(iv) there are in place fisheries management control measures designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups.</p> <p>(c) subsidies for research to inform fisheries management decision makers, including data collection, surveys, data analysis, and stock monitoring, sampling and assessment;</p> <p>(d) subsidies for fisheries stock enhancement, marine conservation, and marine protection, including marine environment restoration, hatcheries for breeding, artificial reefs and by-catch mitigation devices;</p> <p>(e) subsidies for access to the fisheries resources of developing countries;</p>	<p>sustainable use and conservation (e.g., devices for Vessel Monitoring Systems); provided that the subsidies do not give rise to any increase in the marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn.</p> <p>(c) For the purposes of Article I.1(c), subsidies to cover personnel costs shall not be interpreted as including:</p> <p>(1) subsidies exclusively for re-education, retraining or redeployment of fishworkers⁸² into occupations unrelated to marine wild capture fishing or directly associated activities; and</p> <p>(2) subsidies exclusively for early retirement or permanent cessation of employment of fishworkers as a result of government policies to reduce marine wild capture fishing capacity or effort.</p> <p>(d) Nothing in Article I shall prevent subsidies for vessel decommissioning or capacity reduction programmes, provided that:</p> <p>(1) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;</p>	<p>broad language of the exception covering subsidies for the adoption of techniques aimed at reducing the environmental impact of fishing.</p> <p>In connection with the condition in a number of the general exceptions that the subsidies in question not give rise to any increase in capacity, a number of delegations have questioned whether the physical vessel parameters in the Chairman's text are adequate. Suggestions in this regard include referring to "fishing effort" instead.</p> <p>In terms of individual proposed general exceptions, delegations wishing to broaden these exceptions have noted particular concerns with the items covering subsidies for retraining and redeployment of fishworkers, and for retirement or permanent cessation of marine wild capture fishing in the context of government capacity reduction programmes. These delegations consider that there are a number of other "social safety net" programmes that also should benefit from a general exception, including payments to fishworkers during closed seasons, or for other temporary cessations of fishing activity, and for training of fishworkers who remain in the fishing sector, including subsidies for reeducation or retraining of fishworkers to switch to sustainable fishing operations. Other delegations, however, disagree that any of these types of payments should be excepted from the prohibition. In their view, such payments contribute to the problem of overcapacity by maintaining an active fisheries workforce that is too large for the fish supply.</p> <p>A number of delegations seeking broader drafting for certain items listed in the Chairman's text also are calling for an expanded list of general exceptions. Most frequently suggested in this context are general exceptions for subsidies to "small scale" fisheries, for fuel, and for research and development. Advocates of a general exception for subsidies to small-scale fisheries emphasize that developed as well as developing Members have fishing communities in remote areas that are socially and economically marginalized, and that all Members thus should have the possibility to provide fisheries subsidies in</p>

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>(f) subsidies to the construction and maintenance of infrastructure for:</p> <p>(i) fishing communities, such as the provision of housing, transport infrastructure, water and sanitary waste systems;</p> <p>(ii) wharves and port facilities for vessel moorage, loading, unloading, cleaning, sanitation and repair; and</p> <p>(iii) transport infrastructure, water and sanitary waste systems serving processing facilities for fisheries products.</p> <p>(g) subsidies for unemployment relief, early retirement, worker retraining or re-education, and alternative employment assistance for fishermen;</p> <p>(h) subsidies for the replacement of fishing capacity following a natural disaster where fleet capacity has been reduced, provided that capacity is not restored beyond its pre-disaster state;</p> <p>(i) subsidies to artisanal fishing²; and</p> <p>(j) subsidies aimed solely at improving vessel and crew safety³, provided that:</p> <p>(i) there is no increase to the volume of fish hold or engine power of a vessel subject to such programmes; and</p> <p>(ii) the improvement is undertaken to comply with international or domestic standards.</p>	<p>(2) the fish harvesting rights associated with such vessels, whether they are permits, licences, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned;</p> <p>(3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and</p> <p>(4) the fisheries management system in place includes management control measures and enforcement mechanisms designed to prevent overfishing in the targeted fishery. Such fishery-specific measures may include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, such as individual transferable quotas.</p> <p>(e) Nothing in Article I shall prevent governments from making user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes.</p> <p>⁸² For the purpose of this Agreement, the term "fishworker" shall refer to an individual employed in marine wild capture fishing and/or directly associated activities.</p>	<p>these communities. One Member presented a proposal to modify the list in the Chairman's text to include an exception for <i>de minimis</i> subsidies i.e., based on "small programmes", available to all Members, to address this issue (<i>See</i>, TN/RL/GEN/156). Other delegations, including numerous developing country delegations, disagree. Some consider that the only exception for small-scale fisheries should be in the form of S&D treatment for developing Members. Others consider that a general exception for small-scale fisheries would open a substantial loophole in, and thus undermine, the disciplines.</p> <p>Delegations seeking exceptions for subsidies for fuel, and for research and development, argue that such subsidies should be permitted as they do not contribute to overcapacity. Other delegations consider that fuel subsidies are a major contributor to overfishing and thus should be prohibited. Concerning subsidies for "research and development", some delegations consider that certain subsidies for R&D already are covered by the general exceptions and that an expansion of this category thus is not necessary. Others would accept an exception for research subsidies provided to research institutions but oppose any exception allowing the provision of such subsidies to private entities.</p>

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>2. Governmental activity directly associated with the creation and implementation of fisheries management systems⁴, and the enforcement of fisheries management rules shall not be treated as fisheries subsidies.</p> <p>¹Aquaculture is the farming of aquatic organisms, involving intervention in the rearing process to enhance production.</p> <p>²Artisanal fishing is a traditional fishing activity related to the subsistence of fishermen and their families. Artisanal fishing is performed on an in-shore basis with non-automated gear-retrieval devices.</p> <p>³Programmes or activities aimed primarily at vessel modernisation or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph.</p> <p>⁴This comprises the establishment and administration of management systems (including allocating and monitoring fishing licences, permits, quota, vessel numbers and catch returns); adjusting management settings within an existing management system; and developing amendments or additions to the existing management system.]]</p> <p>[[Footnote 7 – [...] The prohibition does not cover the installation of equipment for safety or for control and enforcement purposes. Neither does the prohibition cover equipment fitted for the purpose of reducing environmentally harmful emissions.]] See also, Prohibition section.</p> <p>[[3.1 The following fisheries subsidies, provided the conditions set out in this paragraph are properly fulfilled, shall not fall under the prohibition set out in Article 2:</p> <p>(a) subsidies providing a social safety net for fishermen:</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>(i) early retirement schemes;</p> <p>(ii) re-education, training or alternative employment assistance;</p> <p>(iii) social programmes;</p> <p>(iv) life insurance; and/or</p> <p>(v) livelihood income support to compensate for unemployment or for the suspension of capture fishery activities;</p> <p>(b) subsidies for fisheries research, including data collection, surveys, data analysis, and stock monitoring, sampling and assessment;</p> <p>(c) subsidies related to fisheries stock enhancement, including marine conservation and protection, marine environment restoration, artificial reefs and by-catch mitigation devices;</p> <p>(d) subsidies aimed solely at improving vessel and crew safety⁶, provided that the improvement is undertaken to comply with international or domestic standards;</p> <p>(e) subsidies for vessel capacity reduction programmes, provided that the:</p> <p>(i) vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;</p> <p>(ii) fish harvesting rights associated with such vessels, whether they are permits, licenses, fish quotas or any other form of harvesting rights, are permanently revoked</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>and may not be reassigned; and</p> <p>(iii) owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries;</p> <p>(f) other fisheries subsidies that are indirectly linked to harvesting activities of capture fisheries, such as fishing port facilities and inland processing facilities for fisheries products.</p> <p>3.2 In case of natural or environmental disasters, the prohibition of Article 2 shall temporarily not apply, so as to enable governments to provide short-term emergency relief and to implement recovery adjustment programmes.</p> <hr/> <p>⁶Programmes or activities aimed primarily at vessel modernisation or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph.]]</p> <p>[[2.1 Nothing in Article 1 of this Annex shall prevent government assistance for:</p> <p>(a) vessel decommissioning programmes, provided that:</p> <p>(i) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>in the world;</p> <p>(ii) the fish harvesting rights associated with such vessels are permanently revoked and may not be reassigned;</p> <p>(iii) the owners of such vessels are required to relinquish any claim associated with such vessels that could qualify such owners for any present or future harvesting rights in any fishery; and</p> <p>(iv) there are in place fisheries management control measures designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups.</p> <p>(b) assistance and user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes;</p> <p>(c) research to inform fisheries management decision makers, including data collection, surveys, data analysis and stock monitoring, sampling and assessment;</p> <p>(d) measures that enhance marine resources rather than capacity to harvest those resources, such as fisheries stock enhancement, marine conservation and marine protection, including marine environment restoration, hatcheries for breeding, artificial reefs and by-catch</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>mitigation devices;</p> <p>(e) the construction and maintenance of infrastructure for fishing communities, such as the provision of housing, roadways and water and sanitary waste systems;</p> <p>(f) unemployment relief, early retirement, worker retraining or re-education, life insurance, support for the temporary suspension of fishing activities and alternative employment assistance for fishermen;</p> <p>(g) the replacement of fishing capacity following a natural disaster where fleet capacity has been reduced, provided that capacity is not restored beyond its pre-disaster state; and</p> <p>(h) the improvement of vessel and crew safety³, provided that:</p> <p style="padding-left: 20px;">(i) there is no increase to fishing capacity, such as the volume of fish hold or engine power of a vessel subject to such programme; and</p> <p style="padding-left: 20px;">(ii) the improvement is undertaken to comply with international or domestic standards.</p> <p>2.2 This Annex does not cover government-to-government payments to obtain access for a Member's distant water fishing fleet to fisheries resources within the exclusive economic zone of another country. The further transfer of those access rights to the Member's fishing fleet is covered by this Annex but is not prohibited under Article 1, provided that:</p> <p>(i) the Member's fishing fleet pays</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>compensation comparable to the cost the fleet would otherwise have to pay for access to the fisheries resources;</p> <p>(ii) the terms and conditions of access, including the compensation paid by the fishing fleet, are published; and</p> <p>(iii) the access arrangement provides for a science-based assessment and monitoring of the status of the fisheries resources in question and for compliance with applicable fishery management systems.</p> <p>2.3 Government funding of services directly related to fisheries management, including data collection and analysis for fisheries science, management and enforcement, the protection and restoration of marine habitats, the development and implementation of fisheries management measures, and the monitoring and enforcement of fishery regulations are not covered by this Annex.⁴</p> <p>³Programme or activities aimed primarily at vessel modernization or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph.</p> <p>⁴Fisheries management includes the establishment and administration of management systems (including allocating and monitoring fishing licences, permits, quota, vessel numbers and catch returns); adjusting management settings within an existing management system; and developing amendments or additions to the existing management system.]]</p> <p>[[2. Notwithstanding the provisions of Article 1 of this Annex and Parts III and V of this Agreement, the following subsidies shall be understood as having no, or at most minimal, trade distorting effects or negative effects on fisheries resources management, and thus considered</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>non-actionable:</p> <p>(a) government-to-government payments to obtain access for a Member's distant water fishing fleet to fisheries resources within the exclusive economic zone of another country under the following conditions:</p> <p>(i) the terms and conditions of access, including the compensation paid by the fishing fleet, are published; and</p> <p>(ii) the access arrangement provides for a science-based assessment and monitoring of the status of the fisheries resources in question and for compliance with applicable fishery management systems;</p> <p>(b) subsidies for vessel decommissioning programmes under the following conditions:</p> <p>(i) the vessels subject to such decommissions are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;</p> <p>(ii) the fish harvesting rights, or their sub-allocations, associated with such decommissioned vessels are permanently revoked and shall not be reassigned; and</p> <p>(iii) there are in place fisheries management control measures, including enforcement mechanisms, designed to</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups.</p> <p>(c) subsidies for small-scale fisheries, if such fisheries meet the following conditions:</p> <p>(i) the size of fishing vessels is less than (XX) meters in length or (YY) gross tons;</p> <p>(ii) the area of the authorized fishing operation is within the territorial waters and/or the exclusive economic zones;</p> <p>(iii) there exist registration systems of fishing vessel; and</p> <p>(iv) there are in place fisheries management control measures, designed to prevent over-fishing in the targeted fishery, which include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups;</p> <p>(d) government expenditures for the construction and maintenance of general infrastructure for fishing communities, such as the provision of housing, roadways, water and sanitary waste systems, and fishing port facilities;</p> <p>(e) government expenditures for social safety net for fishermen, including unemployment relief, early retirement,</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>worker training or education, fishery insurance covering life and injury for workers and damage for boats and gears, payment for relief from natural disaster or similar environmental/economic changes, support for the temporary suspension of fishing activities, and alternative employment assistance for fishermen;</p> <p>(f) government expenditures for research on fisheries management, including data collection, surveys, data analysis, stock monitoring, sampling and assessment; and</p> <p>(g) government expenditures for measures that enhance marine resources rather than capacity to harvest those resources, such as fisheries stock enhancement, marine conservation and marine protection, including marine environment restoration, hatcheries for breeding, artificial reefs and by-catch mitigation devices.]]</p> <p>[[3.2 Except as provided in this Annex, and without prejudice to Parts III and V of the ASCM and Articles 2 and 3.1 herein, the following subsidies, within the meaning of Article 1 of the ASCM and this Annex, shall be considered as actionable within the meaning of Article 5 of the ASCM:</p> <p>(a) Vessel decommissioning programmes, unless:</p> <p>(i) the vessels subject to such programmes are scrapped or</p>		

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<p>otherwise permanently and effectively prevented from being used for fishing anywhere in the world;⁷ and</p> <p>(ii) the fish harvesting rights associated with such vessels, whether they are permits, licenses, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned; and</p> <p>(iii) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and</p> <p>(iv) there are in place fisheries management plan designed to prevent over-fishing in the targeted fishery, such as limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, provided that special flexibility should be given to developing countries, including any technical assistance requested by any such developing country as provided in Article 5 below.</p> <p>(b) subsidies granted, in law or in fact, whether solely or as one of several other</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>conditions, where there is an increase in the subsidizing Member's capacity to produce a fishery product due to the subsidy.</p> <p>(c) subsidies granted, in law or in fact, whether solely or as one of several other conditions, where there is an increase in the subsidizing Member's relative share of production of a fishery product, as compared to non-subsidized production, over a representative period sufficient to demonstrate clear trends in production.</p> <p>3.3 The list of actionable subsidies in section 3.2 above is merely illustrative, and does not limit the general rule expressed in section 3.1 above.</p> <p>4.1 Notwithstanding Articles 2 and 3 of this Annex, the following subsidies are not actionable:</p> <p>(a) Provision of a social safety net for fishermen, including early retirement schemes, re-education, training or alternative employment assistance, unemployment relief, life insurance, support for the temporary suspension of fishing activities;</p> <p>(b) Fisheries research, including data collection, surveys, data analysis, and stock monitoring, sampling and assessment;⁸</p> <p>(c) Fisheries stock enhancement, including marine conservation and protection, marine environment restoration, protection and development of a Member's own archipelagic waters⁹, artificial reefs, hatcheries for breeding and by-catch mitigation devices;¹⁰</p> <p>(d) Improving vessel and crew safety¹¹,</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>provided that the improvement is undertaken to comply with international or domestic standards; and there is no increase in fishing capacity¹², such as the volume of fish hold or engine power of a vessel subject to such programme;</p> <p>(e) Construction and maintenance of general infrastructure for fishing activities, such as wharves and fishing ports and related facilities, roadways, water and sanitary waste systems, the provision of housing and other forms of community development infrastructure;¹³</p> <p>(f) Short-term emergency relief, recovery adjustment programmes and replacement of fishing capacity following natural or environmental disasters, provided that fishing fleet capacity is not restored beyond its pre-disaster state¹⁴, except that special flexibility shall be given to developing countries pursuant to Article 5 of this Annex;</p> <p>(g) Assistance and user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes, and other expenses related to administration and operation of fishery management programmes, including allocation and monitoring of licences, permits, quotas, vessel numbers and catch returns.</p> <hr/> <p>⁷Vessels decommissioned for legitimate research and training purposes, with no commercial functions, need not comply with the conditions of this exception.</p> <p>⁸This is limited to fisheries research that does not result in commercial sale of the fish harvested.</p> <p>⁹Archipelago is as defined in Article 46 of UNCLOS 1982, and calculation of the archipelagic baselines is defined in Article 47 thereof.</p>		

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<p>¹⁰This provision is aimed at measures that enhance marine resources rather than capacity to harvest those resources.</p> <p>¹¹Programmes or activities aimed primarily at vessel modernisation or repair do not fall within this sub-paragraph. The construction of vessels is not permitted under this sub-paragraph.</p> <p>¹²Fishing capacity is understood here to mean the ability of a vessel or fleet of vessels to catch fish.</p> <p>¹³General infrastructure for fishing communities shall also not be considered to be regionally specific under the ASCM.</p> <p>¹⁴Restoration to pre-disaster state is not intended to restore a pre-disaster state of over-capacity.]]</p> <p>[[II. Notwithstanding the provisions of Article I, and subject to the provision of Article V:</p> <p>(a) ...</p> <p>(f) Nothing in Article I shall prevent a Member from providing subsidies referred to in Article I that do not otherwise fall under the provisions of this Article or Article III, provided that</p> <p>(1) the subsidies are exclusively in support of fisheries conducted within waters subject to its jurisdiction, and</p> <p>(2) the annual amount of such subsidies per Member provided under this exception does not exceed X% of the average landed value of fish harvested in these waters for the three preceding years for which data is available.]]</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p data-bbox="73 264 710 323">[[II. Notwithstanding the provisions of Article I, and subject to the provision of Article V:</p> <p data-bbox="170 360 710 480">(a) For the purposes of Article I.1(a), subsidies exclusively for improving fishing or service vessel and crew safety shall not be prohibited, provided that:</p> <p data-bbox="264 512 710 603">(1) such subsidies do not involve new vessel construction or vessel acquisition;</p> <p data-bbox="264 635 710 970">(2) such subsidies do not give rise to any increase in marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn; and</p> <p data-bbox="264 1002 710 1093">(3) the improvements are undertaken to comply with safety standards.</p> <p data-bbox="170 1125 710 1216">(b) For the purposes of Articles I.1(a) and I.1(c) the following subsidies shall not be prohibited:</p> <p data-bbox="264 1248 710 1487">subsidies exclusively for: (1) the adoption of gear for selective fishing techniques; (2) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing; (3) compliance with fisheries management regimes aimed at sustainable use and conservation (e.g.,</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>devices for Vessel Monitoring Systems); provided that the subsidies do not give rise to any increase in the marine wild capture fishing capacity of any fishing or service vessel, on the basis of gross tonnage, volume of fish hold, engine power, or on any other basis, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn.</p> <p>(c) For the purposes of Article I.1(c), subsidies to cover personnel costs shall not be interpreted as including:</p> <p>(1) subsidies exclusively for re-education, retraining or redeployment of fishworkers¹² into occupations unrelated to marine wild capture fishing or directly associated activities; and</p> <p>(2) subsidies exclusively for early retirement or permanent cessation of employment of fishworkers as a result of government policies to reduce marine wild capture fishing capacity or effort.</p> <p>(d) Nothing in Article I shall prevent subsidies for vessel decommissioning or capacity reduction programmes, provided that:</p> <p>(1) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world;</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>(2) the fish harvesting rights associated with such vessels, whether they are permits, licences, fish quotas or any other form of harvesting rights, are permanently revoked and may not be reassigned;</p> <p>(3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights that could qualify such owners and holders for any present or future harvesting rights in such fisheries; and</p> <p>(4) the fisheries management system in place includes management control measures and enforcement mechanisms designed to prevent overfishing in the targeted fishery. Such fishery-specific measures may include limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels, individuals and/or groups, such as individual transferable quotas.</p> <p>(e) Nothing in Article I shall prevent governments from making user-specific allocations to individuals and groups under limited access privileges and other exclusive quota programmes.</p> <p>¹²For the purpose of this Agreement, the term "fishworker" shall refer to an individual engaged in marine wild capture fishing and/or directly associated activities.]]</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<u>SPECIAL AND DIFFERENTIAL TREATMENT</u>		
<p>[[27bis.1 The prohibition of Article 3 <i>bis</i> shall not apply to fisheries subsidies provided by a developing country Member where such subsidies do not exceed the <i>de minimis</i> level for that Member. [To be elaborated, including the possibility of further flexibilities for LDCs.]]]</p> <p>[[6.1 Except where provided otherwise, the provisions of this Annex do not apply to a developing country Member for as long as such Member does not, as from the entry into force of this Annex, increase its fishing capacity, to an extent that it is an impediment to the sustainable exploitation of fishery resources worldwide.</p> <p>6.2 Any Member can refer the matter whether such an impediment is taking place or is imminent, as the case may be, to the Permanent Group of Experts established under Article 24.3 of the SCM Agreement.]]</p> <p>[[2. Notwithstanding the provisions of paragraph 1 of this Annex, developing country Members may grant subsidies as set out under paragraph 1.1 to fishing vessels with an overall length of 20 metres or less and whose main area of operation is within that Member's area of fisheries jurisdiction extending up to 12 nautical miles from the baselines. Members shall, through their domestic law, ensure that this requirement is enforced after the subsidy is granted.</p> <p>3. A developing country Member may nevertheless grant such subsidies as are listed in paragraph 1.1 to fishing vessels with an overall length of 28 metres or less,</p>	<p>III.1 The prohibition of Article 3.1(c) and Article I shall not apply to least-developed country ("LDC") Members.</p> <p>III.2 For developing country Members other than LDC Members:</p> <p>(a) Subsidies referred to in Article I.1 shall not be prohibited where they relate exclusively to marine wild capture fishing performed on an inshore basis (i.e., within the territorial waters of the Member) with non-mechanized net-retrieval, provided that (1) the activities are carried out on their own behalf by fishworkers, on an individual basis which may include family members, or organized in associations; (2) the catch is consumed principally by the fishworkers and their families and the activities do not go beyond a small profit trade; and (3) there is no major employer-employee relationship in the activities carried out. Fisheries management measures aimed at ensuring sustainability, such as the measures referred to in Article V, should be implemented in respect of the fisheries in question, adapted as necessary to the particular situation, including by making use of indigenous fisheries management institutions and measures.</p> <p>(b) In addition, subject to the provisions of Article V:</p> <p>(1) Subsidies referred to in Articles I.1(d), I.1(e) and I.1(f) shall not be prohibited.</p> <p>(2) Subsidies referred to in Article I.1(a) and I.1(c) shall not</p>	<p>There is general agreement among delegations that new fisheries subsidies disciplines must include provisions for substantial special and differential treatment for developing Members. There are different views, however, over the nature and extent of such provisions, as discussed below.</p> <p>Concerning least-developed country ("LDC") Members, most if not all delegations consider appropriate the proposed blanket exception for subsidies granted by LDCs.</p> <p>Concerning developing Members other than LDCs, delegations generally agree that the S&D provisions should not amount to a "blank check", i.e., an unlimited and unconditional right to provide fisheries subsidies. Views differ considerably, however, as to which types of otherwise prohibited subsidies should be permitted, as well as the respective conditionalities that should be attached thereto.</p> <p>In this regard, a large number of delegations, especially developing country delegations, consider the draft provisions to be too narrow, and subject to too many conditionalities, to be usable in practical terms. Some of these delegations take the view that developing countries did not cause the current situation of global overfishing, and also argue that there are underexploited fisheries resources in their waters, for which reasons <i>inter alia</i> developing Members should be allowed to provide fisheries subsidies in the context of their development policies, given the importance in their economies of fishing and fisheries products in terms of food, employment and income. Other delegations take the view that the difficulties identified in the S&D text stem from the excessive breadth of the prohibition, and that a major part of the solution would be in appropriately narrowing the prohibition. Another group of delegations, however, considers that the draft text strikes an appropriate</p>

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<p>for the purpose of exploiting underutilised fish stocks within its area of fisheries jurisdiction, provided that any build-up of fishing capacity is consistent with a comprehensive resource management plan based on scientific advice for the sustainable management and exploitation of such fish stocks. The management and exploitation plan shall have been approved by an internationally recognised competent management or scientific body and the approved plan shall be notified in accordance with paragraphs 5, 6 and 7 of this Annex.]]</p> <p>[[4.1 Notwithstanding the provisions set out in Articles 2 and 3, developing country Members shall be allowed to grant or maintain fisheries subsidies to:</p> <p>(a) fishing activities related to the subsistence and livelihood of the fishermen and their families⁷, including the provision of goods and services by a government under the form of infrastructure, other than general infrastructure, benefiting those fishermen and their families;</p> <p>(b) fishing vessel construction, repair or vessel modernization or gear acquisition or improvement, provided that the purpose is to exploit:</p> <p>(i) fisheries in the Member's maritime jurisdiction;</p> <p>(ii) or high seas fishing quotas or any other rights established by a regional fisheries management organization (RFMO) or a regional fisheries management arrangement.</p>	<p>be prohibited provided that they are used exclusively for marine wild capture fishing employing decked vessels not greater than 10 meters or 34 feet in length overall, or undecked vessels of any length.</p> <p>(3) For fishing and service vessels of such Members other than the vessels referred to in paragraph (b)(2), subsidies referred to in Article I.1(a) shall not be prohibited provided that (i) the vessels are used exclusively for marine wild capture fishing activities of such Members in respect of particular, identified target stocks within their Exclusive Economic Zones ("EEZ"); (ii) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level; and (iii) that assessment has been subject to peer review in the relevant body of the United Nations Food and Agriculture Organization ("FAO")⁸³.</p> <p>III.3 Subsidies referred to in Article I.1(g) shall not be prohibited where the fishery in question is within the EEZ of a developing country Member, provided that the agreement pursuant to which the rights have been acquired is made public, and contains provisions designed to prevent overfishing in the area covered by the agreement based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at</p>	<p>balance between substantial flexibility for developing Members to provide subsidies in keeping with their development needs, and necessary conditionalities to ensure that the subsidized activities are sustainable. Certain delegations emphasize that all Members should accept a meaningful level of disciplines, as all would benefit from doing so given that the problems of overcapacity and overfishing are global, threatening the long-term livelihoods of fishers in all countries.</p> <p>Regarding the exception for subsidies to subsistence-oriented fisheries (Article III.2(a)), some developing country delegations consider that this category is drafted too narrowly and in overly-restrictive terms. They consider that it should be broadened beyond subsistence-oriented fisheries, to cover all artisanal fisheries and small-scale commercial fisheries. To this end, some suggest removing the references to the employer-employee and family relationships, consumption of the catch, small profit trade, and lack of mechanization. Other suggestions in this regard are that management conditionalities remain indicative but that the references to international management instruments be replaced by references to indigenous institutions. Other delegations oppose any broadening of this exception. They indicate that they can accept what they consider to be an almost unconditional carve-out for this category of fisheries subsidies only because the category itself is very narrowly defined. For these delegations, any expansion of this category would need to be accompanied by stronger management conditionalities.</p> <p>Concerning the other exceptions proposed for non-LDC developing Members (Article III.2(b)(1)-(3)), here as well many developing country delegations object to the limitations contained in the draft text. In particular, many consider that drawing a distinction on the basis of vessel length as to the kinds of subsidies that would be permitted and the conditionalities that would be attached is inappropriate. Some suggest instead criteria based on the characteristics of the fishing activities. Some consider that if boat length is to be used, it should be expanded from</p>

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>(c) fuel, bait and/or ice supplied for fishing activities.</p> <p>⁷Those activities are performed at an in-shore basis with non-automatic net-retriever devices, provided that (a) the activities are carried out by fishermen, on an individual basis or organized in associations, including, but not necessarily, the family members; (b) the basic scope of the activities encompasses both family livelihood and a small profit trade; and (c) there is no major employer-employee relationship on the activities carried out.]]</p> <p>[[5. For purposes of this Annex, in addition to the provisions of Articles 27 of this Agreement and paragraph 4 of Article 3 and paragraph 3 of Article 4 of this Annex, developing country Members may employ the following treatment:</p> <p>5.1 The vessel reduction requirement in paragraph (a)(ii) of Article 1, which provide that "the gross tonnage of the new vessel is reduced by at least 50 per cent of the sum of the gross tonnage of the withdrawn vessels in the same fishery category" shall not apply to developing country Members if such a developing country Member possesses monitoring, controlling, and surveillance measures to ensure that the areas of fishing operations of such vessel, newly acquired or constructed under the subsidy program, are within its territorial waters or exclusive economic zones.</p> <p>5.2 The requirements for fisheries management control measures for small-scale fisheries, provided in paragraph (c)(iv) of Article 2, shall not apply to developing country Members during the period of () years after the date of entry into force of this Annex.</p> <p>[Provisions for a developing country Member, which possesses export</p>	<p>ensuring the sustainable use and conservation of marine species, such as, <i>inter alia</i>, the <i>Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks</i> ("<i>Fish Stocks Agreement</i>"), the <i>Code of Conduct on Responsible Fisheries of the Food and Agriculture Organization</i> ("<i>Code of Conduct</i>"), the <i>Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas</i> ("<i>Compliance Agreement</i>"), and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. These provisions shall include requirements and support for science-based stock assessment before fishing is undertaken pursuant to the agreement and for regular assessments thereafter, for management and control measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the host Member and to relevant international organizations, and for such other measures as may be appropriate.</p> <p>III.4 Members shall give due regard to the needs of developing country Members in complying with the requirements of this Annex, including the conditions and criteria set forth in this Article and in Article V, and shall establish mechanisms for, and facilitate, the provision of technical assistance in this regard, bilaterally and/or through the appropriate international organizations.</p> <p>⁸³ If the Member in question is not a member of the FAO, the peer review shall take place in another recognized and competent international organization.</p>	<p>the 10 meters in the draft text to 24-25 meters, such that subsidies could be provided to operate as well as to construct or modify such longer vessels. Concerning the area of operations within which subsidization would be permitted, some developing country delegations consider that the proposed limitation to within the Member's exclusive economic zone ("EEZ") is inappropriate, <i>inter alia</i> because this term has no legal status for certain WTO Members, because of the existence of bilateral fishing agreements between neighbouring Members, and because this parameter is artificial where straddling and highly migratory fish stocks are concerned.</p> <p>In this context, certain delegations have proposed that developing Members also be permitted to subsidize both vessel construction and operating costs for high seas fishing operations under quotas of regional fisheries management organizations, and for fishing under access arrangements. Some developing country Members have indicated support for this proposed allowance of subsidies for fishing outside of a Member's EEZ, but only in cases where the targeted stock is highly migratory or straddling, and is managed in accordance with international fisheries instruments and for which specific quotas or limits have been allocated. Among the delegations seeking various relaxations of the definitions and restrictions on the different categories of S&D treatment in the draft text, some have stressed that the proposed general discipline in Article IV and the proposed management conditionalities in V would impose sufficient checks and balances, and thus would justify the reduction of restrictions that they seek.</p> <p>Other delegations consider that the multi-tiered approach and the overall level of disciplines in the S&D provisions in the Chairman's text are appropriate. A number of questions and suggestions for clarification have been raised, however. These include questions as to the usefulness of boat length as a parameter for calibrating subsidy disciplines, because of difficulty of enforcement and ease of circumvention, and concerns over whether the conditions and criteria as drafted are sufficient to ensure that any new capacity built with subsidies not go beyond a</p>

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<p>competitiveness defined in Article 27.6 of the ASCM, relating to products originated from marine capture fisheries, will be further developed.]]]</p> <p>[[5.1 Notwithstanding the provisions of the ASCM and Articles 2, 3, and 4 of this Annex, a developing country Member shall be allowed to grant or maintain fisheries subsidies to its artisanal fisheries activities¹⁵, defined herein as those which:</p> <ul style="list-style-type: none"> (a) Operate within its territorial waters and mostly close to shore; (b) Use vessels of [proportional ratio between gross tonnage and engine power] and which utilize primarily manual gear; and (c) Are operated by individual fishermen or family members for the purpose of subsistence or local trade. <p>Such subsidies are not actionable.</p> <p>5.2 Notwithstanding the provisions of the ASCM and Articles 2, 3, and 4 of this Annex, a developing country Member shall be allowed to grant or maintain subsidies to its small-scale fisheries for the purpose of fishing vessel construction, repair, or modernization, or gear acquisition or improvement, or fuel, or bait, or ice. For the purposes of this section, small-scale fisheries shall be defined as those that:</p> <ul style="list-style-type: none"> (a) Are below 20 meters dimension; and (b) Operate within the Member's 12 nautical mile limit or the Member's own archipelagic waters. 		<p>sustainable level in relation to the targeted fish stocks. Many of these delegations see a clear distinction between allowing developing Members to provide subsidies to build up their own fleets to exploit their own fish stocks on the one hand, and allowing them to subsidize operating costs for those fleets, on the other hand. A number of these Members also reject the idea that any Member, developing or developed, be allowed to provide subsidies for fishing on the high seas, and thus consider the treatment of this issue in the Chairman's text to be appropriate.</p> <p>Concerning the conditioning of most S&D provisions in the Chairman's text on the management requirements in Article V, many developing country delegations consider that the management requirements are so strict that the S&D provisions could become difficult if not impossible to use in practice. In this regard, a number of developing country delegations have proposed changes to these requirements to make them more flexible and less prescriptive. One such suggestion is a "tiered" approach to fisheries management by developing Members, with indicative management for subsistence fisheries, limited management requirements for "small-scale commercial" fisheries, and full management requirements only for larger-scale commercial fisheries. It also has been suggested that the management conditionalities pertaining to subsidies for port infrastructure, income and price support and subsidies to processing activities should be voluntary, rather than mandatory. Certain other delegations have proposed (see, TN/RL/GEN/155/Rev.1) removing from the text altogether the links between S&D provisions and management conditionalities based on internationally-recognized best practices, and replacing them with references to indigenous management institutions. Several delegations have concerns over the requirements relating to "prior scientific status assessment" of stocks, and peer review thereof, in relation to subsidies for the acquisition, construction, modernization, etc. of larger vessels. Some note that in multi-species tropical fisheries, the concept of "identified target stocks" often is not relevant or applicable. Others indicate that for systemic</p>

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<p>Provided that they meet the contingencies of Article 5.5 of this Annex, such subsidies are not actionable.</p> <p>5.3 Notwithstanding the provisions of the ASCM and Articles 2, 3, and 4 of this Annex, a developing country Member shall be allowed to grant or maintain subsidies for the purpose of fishing vessel construction, repair, or modernization, or gear acquisition or improvement, or fuel, or bait, or ice, provided that the purpose is to exploit:</p> <p>(a) fisheries in the Member's own Exclusive Economic Zone; or</p> <p>(b) rights held by the Member in high seas fishing quotas or any other rights established by a regional fisheries management organization (RFMO) or a regional fisheries management arrangement.</p> <p>Provided that they meet the contingencies of Article 5.6, of this Annex such subsidies are not actionable.</p> <p>5.4 Upon the request of developing country Members, and with reference to guidance provided by the UN Fish Stocks Agreement, developed country Members shall provide technical assistance on mutually agreed terms and conditions to developing country Members to allow them to participate fully in any RFMO adjacent to their exclusive economic zone or archipelagic waters.</p> <p>5.5 Fishing subsidies meet the definition of Article 5.2 of this Annex contingent on a showing that:</p> <p>(a) The Member has a fishery management plan in place that is effectively monitored and adequately enforced;</p> <p>(b) The fishery does not adversely affect resources governed by the fishery management plan; and</p>		<p>reasons, they cannot agree to reviews of Members' stock assessments being conducted by an outside organization, the FAO. (<i>See</i> also comments in Fisheries Management section.)</p> <p>Some other delegations, including certain developing country delegations, while recognizing that the conditionalities are demanding, particularly for low-income developing Members, consider that strong management requirements must be the basis for any exceptions, whether general exceptions or S&D, but consider that the provisions as drafted could be streamlined and clarified. Yet others are of the view that the management provisions as drafted build in sufficient flexibility to accommodate the needs and realities of all Members, developing as well as developed.</p> <p>For many developing country delegations, government-to-government payments for access are important and they applaud the exemption in the Chairman's text of subsidies arising from the onward transfer of such access rights. Some delegations have suggested that the text in this area should refer not only to EEZs, but also to multilaterally-managed fisheries. A proposal from three delegations (<i>see</i>, TN/RL/GEN/155/Rev.1) suggests amending the Chairman's text to explicitly indicate that developing countries have the right to access the waters of other developing countries.</p> <p>Regarding technical assistance, many delegations have indicated that this is a critical need, and have welcomed the inclusion in the draft text of a provision addressing it. Many stressed the importance of obtaining technical and financial assistance specifically for establishing and operating fisheries management systems. A number of developing country delegations have indicated that the draft provision should be strengthened, and a group of delegations submitted a proposal (<i>see</i>, TN/RL/GEN/158) to redraft the provision in the Chairman's text so as to, <i>inter alia</i>, require the provision of technical assistance to assist developing Member to implement their obligations under new disciplines. Some delegations are concerned,</p>

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>(c) The small-scale fishing activities will not adversely affect fishery resources of other Members or the resources governed by relevant RFMO's.</p> <p>5.6 Fishing subsidies meet the definition of Article 5.3 of this Annex contingent on a showing that the developing country Member has:</p> <p>(a) underexploited resources in its EEZ; or</p> <p>(b) a right to high seas fishing quotas or extra quota in a RFMO.</p> <p>5.7 Upon the request of developing country Members, developed country Members shall provide technical assistance to developing country Members on mutually agreed terms and conditions to develop the capacity to initiate, implement and enforce compliance with a fishery management plan in keeping with the FAO Code of Conduct on Responsible Fisheries and adequate to provide the showing required by Articles 5.3, 5.4 and 5.5 of this Annex.</p> <p>¹⁵Artisanal fisheries activities shall include on-board handling (including but not limited to provision of cool boxes, fish holds and other measures to encourage hygiene and sanitation and to preserve fish quality) and post-harvest handling.]]</p> <p>[[X.1 Notwithstanding Article Y [prohibition] and subject to the conditions set forth in this Article, developing country Members shall be allowed to maintain or grant the following fisheries subsidies:</p> <p>(a) for fishing vessel construction,</p>		<p>however, over the prospect that provision of technical assistance to implement the management conditionalities for providing subsidies would constitute, in effect, technical assistance for subsidizing. Other delegations, while recognizing the legitimate needs of developing Members for technical assistance, wish to ensure that any provisions in the new disciplines take full account of existing mechanisms and institutions. Some delegations consider that the draft text strikes the right balance.</p>

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>acquisition, repair, modification or modernization, including gear acquisition or improvement; or</p> <p>(b) to support the operation of fishing fleets (such as supply of fuel, bait or ice); or</p> <p>(c) to fishing activities related to the subsistence and livelihood of the fishermen and their families.¹</p> <p>X.2 The subsidies referred to X.1 (a) and (b) above may be only maintained or granted when the Member specifically determines that its domestic fishing capacity² is reasonably lower than necessary to harvest a sustainable allowable catch³ of:</p> <p>(a) non-overexploited stocks⁴ located exclusively in the Member's maritime areas;⁵ or</p> <p>(b) fishing quotas⁶ or any other rights⁷ agreed within the framework of a regional fisheries management organization or arrangement, which operates under a fisheries management system that is based on relevant international standards and practices, provided that the Member is a coastal State in the managed region.</p> <p>X.3 A Member that grants or maintains subsidy programmes pursuant to X.1 (a) or (b) shall ensure that, even if fully utilized, the resulting fishing capacity⁸ is below than necessary to harvest a sustainable allowable catch of the exploited stock and results in no more than moderate exploitation so that limited potential for further non-subsidized expansion of production remains.</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>X.4 The fisheries subsidies referred to in paragraph X.1 (a) or (b) shall be subject to compliance with the provisions on notification and transparency in Article XXX.⁹</p> <hr/> <p>¹ Those activities are performed exclusively within the Territorial Sea, with non-automatic gear-retriever devices, provided that (a) the activities are carried out by fishermen, on an individual basis or organized in associations, including, but not necessarily, the family members; (b) the basic scope of the activities encompasses both family livelihood and a small profit trade; and (c) there is no major employer-employee relationship on the activities carried out.</p> <p>²"Domestic fishing capacity" means the capacity of fishing vessels flagged by a Member, owned by companies constituted under the domestic law of that Member, and operated by crews the members of which are in the majority nationals of that Member.</p> <p>³ "Sustainable allowable catch" means a total allowable catch below levels which are capable of producing a long term maximum sustainable yield, based on the best scientific evidence available.</p> <p>⁴ "Overexploited stocks" shall mean all fish stocks except those target stocks that are being exploited below levels which are capable of producing a long term maximum sustainable yield (including the ones with no or almost no fishing activities), based on the best scientific evidence available.</p> <p>⁵ "Maritime areas" encompasses the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf, as defined in the United Nations Convention of the Law of the Sea (UNCLOS).</p> <p>⁶ The term "quotas" means enforceable quantitative limits, established through scientific assessment, applicable on fish volumes for specified period.</p> <p>⁷ The term "any other rights" means the Member's rights to fish stocks (including those with no or almost no fishing activities), that are being exploited below levels which are capable of producing a long term maximum sustainable yield and for which no specific quota has been established but are within constant monitoring by the relevant regional fisheries organizations or arrangements.</p> <p>⁸ "Resulting fishing capacity" means the total capacity authorized by the Member for the fishing of a stocks or group of stocks in its maritime areas, namely the domestic fishing capacity</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>plus the capacity of other vessels authorized by the Member to fish in its maritime areas.</p> <p>⁹ Additional flexibilities should be provided for in the case of subsidies granted by least developed countries, such as longer implementation periods under "Transitional Provisions". Provisions should also be made for technical assistance to developing countries that need it in order to comply with the provisions on notification.]]</p> <p>[[III.1 The prohibition of Article 3.1(c) and Article I shall not apply to least-developed country ("LDC") Members.</p> <p>III.2 For developing country Members other than LDC Members:</p> <p>(a) Subsidies referred to in Article I.1 shall not be prohibited where they relate exclusively to marine wild capture fishing performed within the territorial waters of the Member without deploying any of the internationally recognized destructive fishing methods, provided that the activities are carried out by fish workers, on an individual basis or organized in associations or on employment basis.</p> <p>It is desirable that adequate measures for ensuring sustainability and to prevent environment degradation are adapted as necessary to the particular situation, by making use of indigenous fisheries management institutions and measures.</p> <p>(b) In addition,:</p> <p>(1) Subsidies referred to in Articles I.1(d), I.1(e) and I.1(f) shall not be prohibited.</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>(2) Subsidies referred to in Article I.1(a) and I.1 (c), shall not be prohibited provided that:</p> <p>(i) they are used exclusively for marine wild capture fishing employing decked vessels not greater than 24 meters or 82 feet in length overall, or undecked vessels of any length; and</p> <p>(ii) adequate measures for ensuring sustainability and to prevent environment degradation are adapted as necessary to the particular situation, by making use of indigenous fisheries management institutions and measures.</p> <p>(3) For fishing and service vessels of such Members other than the vessels referred to in paragraph (b) (2), subsidies referred to in Article I.1(a) and Article I.1(c) shall not be prohibited provided that (i) the vessels are used for marine wild capture fishing activities of such Members in respect of particular, identified target stocks within their Exclusive Economic Zones ("EEZ"); (ii) the vessels with fishing quotas or any other rights established by a regional fisheries management organization (RFMO) or a regional fisheries management arrangement; (iii) the vessels for fishing activities in</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>accordance with access arrangements; (iv) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level.</p> <p>III.3 Subsidies referred to in Article I.1(g) shall not be prohibited where the fishery in question is within the EEZ of a developing country Member, provided that (i) those stocks have been subject to prior scientific status assessment conducted in accordance with relevant international standards, aimed at ensuring that the resulting capacity does not exceed a sustainable level; (ii) that assessment has been subject to peer review in the SCM Committee; (iii) the agreement pursuant to which the rights have been acquired is made public and (iv) contains provisions designed to prevent overfishing in the area covered by the agreement based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species, such as, <i>inter alia</i>, the <i>Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks</i> ("<i>Fish Stocks Agreement</i>"), the <i>Code of Conduct on Responsible Fisheries of the Food and Agriculture Organization</i> ("<i>Code of Conduct</i>"), the <i>Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas</i> ("<i>Compliance Agreement</i>"), and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments. These provisions shall include requirements and support for science-based stock assessment before fishing is undertaken pursuant to the agreement and for regular assessments thereafter, for management and control</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>measures, for vessel registries, for reporting of effort, catches and discards to the national authorities of the host Member and to relevant international organizations, and for such other measures as may be appropriate.</p> <p>III.4 Members shall give due regard to the needs of developing country Members in complying with the requirements of this Annex, including the conditions and criteria set forth in this Article and in Article V, and shall establish mechanisms for, and facilitate, the provision of technical assistance in this regard, bilaterally and/or through the appropriate international organizations.]]</p> <p>[[III.4.1 Members recognize that developing country Members, especially least-developed countries and small, vulnerable economies, will face serious challenges in complying with the requirements of this Annex, in particular as regards the conditions and criteria set forth in this Article and in Articles V ("Fisheries Management") and VI ("Notifications and Surveillance").</p> <p>III.4.2 Members recognize that the ability of developing country Members, especially least-developed countries and small, vulnerable economies, to adopt, implement and sustain measures necessary for complying with the requirements of this Annex may depend on the effective and timely provision of technical assistance by Members to developing country Members in accordance with their demands and needs. Members recognize that developing country Members will have different implementation needs and capacities and to this end, developing countries which indicate a need for technical assistance shall be provided with such assistance through bilateral processes, through new and/or existing WTO technical assistance and support mechanisms and through other mechanisms of relevant international and regional organisations.</p> <p>III.4.3 The Committee on Subsidies and Countervailing Measures shall establish a Sub-Committee dealing</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>exclusively with issues related to technical assistance and support programs under this Annex, specifically as regards fisheries management systems and measures related thereto. The Sub-Committee shall coordinate the requests from developing country Members for technical assistance and support programs and shall review the effectiveness of the technical assistance provided to developing country Members.² The Sub-Committee shall periodically report its findings to the Committee on Subsidies and Countervailing Measures and the Committee on Trade and Development.³</p> <p>²The Sub-Committee, in consultation with the developing Member concerned, shall identify any additional needs of that Member for technical assistance and every effort shall be made to ensure that appropriate technical assistance is provided to that Member. The role of the Sub-Committee shall not be to determine the validity of a developing country's request for technical assistance.</p> <p>³Future discussion would be required on the procedures to be followed if a developing country member does not receive the requested technical assistance.]]</p>		

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
	<u>OTHER DISCIPLINES</u>	
<p>[[[Contextual heading: Special provisions]</p> <p>4. Members shall through their domestic law ensure that:</p> <p>4.1 Any fishing vessel subject to a decommissioning programme is scrapped or otherwise permanently and effectively prevented from being used for fishing purposes anywhere in the world; and</p> <p>4.2 any funds or disbursements to a recipient benefiting from any such decommissioning programme are not reinvested in fishing vessels by the recipient.]]</p> <p>[[<u>Fishery Adverse Effects</u></p> <p>5.1 No Member should cause, through the use of any fishery subsidy referred to in Article 3 and Article 4.1 (b) and (c), fishery adverse effects to the interest of other Members.</p> <p>5.2 For the purpose of this Annex, a fishery adverse effect shall be deemed to exist if:</p> <p>(a) the Member does not have a national fisheries management system in place, which may include, <i>inter alia</i>: conservation and management measures based on the best scientific evidence available; fisheries management control measures (fisheries monitoring, surveillance, control and enforcement mechanisms); mechanisms established</p>	<p><u>General Discipline on the Use of Subsidies</u></p> <p>IV.1 No Member shall cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, depletion of or harm to, or creation of overcapacity in respect of, (a) straddling or highly migratory fish stocks whose range extends into the EEZ of another Member; or (b) stocks in which another Member has identifiable fishing interests, including through user-specific quota allocations to individuals and groups under limited access privileges and other exclusive quota programmes. The existence of such situations shall be determined taking into account available pertinent information, including from other relevant international organizations. Such information shall include the status of the subsidizing Member's implementation of internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at the sustainable use and conservation of marine species, such as, <i>inter alia</i>, the <i>Fish Stocks Agreement</i>, the <i>Code of Conduct</i>, the <i>Compliance Agreement</i>, and technical guidelines and plans of action (including criteria and precautionary reference points) for the implementation of these instruments, or other related or successor instruments.</p> <p>IV.2 Any subsidy referred to in this Annex shall be attributable to the Member conferring it, regardless of the flag(s) of the vessel(s) involved or the application of rules of origin to the fish involved.</p>	<p>Most delegations support the basic purpose of this Article, i.e., providing for recourse where a Member's subsidies cause harm to another Member's fishing interests. Some see this as a key provision of the proposed disciplines. Many participants consider, however, that the provision should be clarified in a variety of ways, including by defining the concepts of "harm to" and "identifiable fishing interests", as well as the concepts of capacity and overcapacity, with some suggesting incorporating physical measurements such as gross tonnage, or other concepts such as production capacity of the fleet or vessel. Some participants also suggest broadening this provision to take account of effects on transboundary fish stocks, discrete high seas fish stocks, or possibly all fish stocks. Some participants suggest deleting overcapacity as a form of adverse effects, on the basis that overcapacity only relates to <i>potential</i> negative effects of subsidies, and further that as long as the subsidising Member operates sound management, any overcapacity resulting from subsidization would not lead to negative effects on fish stocks. Others consider that under various WTO agreements potential harm can be the basis for action, and that in the area of fisheries overcapacity itself is a present rather than a potential negative effect.</p> <p>Other issues identified were who would determine the existence of situations of overcapacity, depletion or harm to the concerned fish stocks, and the implications of the provision in respect to harm to the fishing interests of non-WTO Members. Some delegations queried whether this provision was intended to define fisheries adverse effects or actionable subsidies in the fisheries context, and if so what relationship if any this provision had to the provisions on actionable subsidies in the SCM Agreement. In this context, some pointed to their own prior proposals in these areas.</p>

Textual Proposals	Chairman's Text	Delegations' Comments on Chairman's Text
<p>to identify and quantify fishing capacity; vessel registration and licensing system; limited entry systems, catch quotas, limits on fishing effort or allocation of exclusive quotas to vessels; and timely and reliable statistics available on catch and fishing effort in sufficient detail to allow sound statistical analysis⁸; or</p> <p>(b) the volume of the total catch by a Member of any "endangered specie"⁹ and the number of vessels used in those fishing operations are not decreasing, as compared to the total catch volume and number of vessels it had during the previous year.</p> <p>[...]</p> <p><u>Prevention of circumvention</u></p> <p>8.1 Members shall not have recourse to rules of origin (preferential or non-preferential), the flag of a vessel and access rights, among others, as a means to undermine the objectives set out in the preamble and to circumvent their obligations under this Annex.</p> <p>⁸ Where relevant international standards and practices exist, Members shall use them, or the relevant parts of them, as a basis for their national fisheries management systems.</p> <p>⁹ For the purposes of this Annex, "endangered specie" shall mean all species except those that are (a) in a very healthy situation, with no or almost no fishing activities, or that are being exploited below or at a calculated sustainable allowable catch, based on the best scientific information available; or (b) under the administration of a RFMO or a regional fisheries management arrangement, which operate under a fisheries management system that is based on relevant international standards and practices.]]</p>		

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<p>[[<u>Serious Prejudice</u></p> <p>3. In addition to the circumstances provided for in Article 6.3 of the ASCM, serious prejudice may arise in the case of subsidies that qualify for the exceptions in Article 2.1 [and Article 4] of this Annex, where the effect of the subsidy is:</p> <ul style="list-style-type: none"> (a) an increase in the subsidizing Member's capacity to produce the like product; or (b) an increase in the subsidizing Member's relative share of production of the like product, as compared to non-subsidized production over a representative period sufficient to demonstrate clear trends in production. <p>[...]</p> <p><u>Anti-circumvention</u></p> <p>6. For purposes of this Annex, a prohibited subsidy is attributable to the Member conferring the subsidy, regardless of the flag of the vessel harvesting the fish or the application of rules of origin to such fish.]]</p> <p>[[<u>Fisheries subsidies actionable</u></p> <p>3.1 No Member shall cause, through the use of any fishery subsidy included in paragraphs 1 and 2 of ASCM Article 1, adverse effects to the interests of other Members as defined in ASCM Article 5 or adverse effects to fishery resources as defined in Article 7.1 to this Annex, except as otherwise provided in this Annex.</p> <p>[...]</p>		

