

澳門特別行政區

REGIÃO ADMINISTRATIVA ESPECIAL
DE MACAU

行政長官辦公室

GABINETE DO CHEFE DO EXECUTIVO

第30/2023號行政長官公告

Aviso do Chefe do Executivo n.º 30/2023

澳門特別行政區是世界貿易組織（下稱“世貿組織”）的正式成員；

Considerando que a Região Administrativa Especial de Macau é membro de pleno direito da Organização Mundial do Comércio, doravante designada por OMC;

世貿組織於二零二二年六月十七日在日內瓦召開的第十二屆部長級會議上通過了《修正〈馬拉喀什建立世界貿易組織協定〉的議定書》（下稱“議定書”），將《漁業補貼協定》作為附件納入《馬拉喀什建立世界貿易組織協定》；

Considerando igualmente que a OMC adoptou, em 17 de Junho de 2022, na sua 12.^a Conferência Ministerial realizada em Genebra, o Protocolo que Emenda o Acordo de Marraquexe que institui a Organização Mundial do Comércio, doravante designado por Protocolo, que inclui o Acordo sobre as Subvenções à Pesca como anexo do Acordo de Marraquexe que institui a Organização Mundial do Comércio;

澳門特別行政區於二零二三年十月十九日向世貿組織總幹事交存了議定書的接受書，世貿組織總幹事於二零二三年十月二十四日確認收到接受書；

Considerando ainda que a Região Administrativa Especial de Macau depositou, em 19 de Outubro de 2023, junto da Directora-Geral da OMC, o seu instrumento de aceitação do Protocolo, e que a Directora-Geral da OMC confirmou, em 24 de Outubro de 2023, a recepção do instrumento de aceitação;

根據《馬拉喀什建立世界貿易組織協定》第十條第三款的規定，議定書經三分之二多數成員接受後，即對接受這些修正的成員生效，議定書目前尚未生效；

Mais considerando que, nos termos do n.º 3 do artigo X do Acordo de Marraquexe que institui a Organização Mundial do Comércio, o Protocolo só produzirá efeitos, no que respeita aos Membros que o tenham aceite, a partir do momento em que tenha sido aceite por dois terços dos Membros, e que o mesmo ainda não entrou em vigor;

基於此，行政長官根據第3/1999號法律《法規的公佈與格式》第五條（一）項和第六條第一款的規定，命令公佈議定書的英文正式文本及中文譯本。

O Chefe do Executivo manda publicar, nos termos da alínea 1) do artigo 5.º e do n.º 1 do artigo 6.º da Lei n.º 3/1999 (Publicação e formulário dos diplomas), o Protocolo no seu texto autêntico em língua inglesa acompanhado da respectiva tradução em língua chinesa.

二零二三年十二月二十八日發佈。

Promulgado em 28 de Dezembro de 2023.

行政長官 賀一誠

O Chefe do Executivo, *Ho Iat Seng*.

AGREEMENT ON FISHERIES SUBSIDIES

MINISTERIAL DECISION OF 17 JUNE 2022

The Ministerial Conference;

Having regard to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Recalling the mandate given to Members at the Eleventh WTO Ministerial Conference in 2017 in Buenos Aires that the next Ministerial Conference should adopt an agreement on comprehensive and effective disciplines that prohibits certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminates subsidies that contribute to IUU-fishing recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

Decides as follows:

1. The Protocol amending the WTO Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
 2. The Protocol shall hereby be open for acceptance by Members.
 3. The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
 4. Notwithstanding Article 9.4 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.
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ATTACHMENT**PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING
THE WORLD TRADE ORGANIZATION****AGREEMENT ON FISHERIES SUBSIDIES**

Members of the World Trade Organization;

Having regard to the Decision of the Ministerial Conference in document WT/MIN(22)/33 – WT/L/1144 adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Hereby agree as follows:

1. Annex 1A to the WTO Agreement shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of the Agreement on Fisheries Subsidies, as set out in the Annex to this Protocol, to be placed after the Agreement on Subsidies and Countervailing Measures.
2. No reservations may be made in respect of any of the provisions of this Protocol.
3. This Protocol is hereby open for acceptance by Members.
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.¹
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this seventeenth day of June two thousand and twenty-two, in a single copy in the English, French and Spanish languages, each text being authentic.

¹ For the purposes of calculation of acceptances under Article X:3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.

ANNEX**AGREEMENT ON FISHERIES SUBSIDIES****ARTICLE 1: SCOPE**

This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.^{1, 2, 3}

ARTICLE 2: DEFINITIONS

For the purpose of this Agreement:

- (a) "fish" means all species of living marine resources, whether processed or not;
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;
- (e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

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

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

³ For greater certainty, for the purposes of this Agreement, a subsidy shall be attributable to the Member conferring it, regardless of the flag or registry of any vessel involved or the nationality of the recipient.

**ARTICLE 3: SUBSIDIES CONTRIBUTING TO
ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴**

3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁵ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following^{6,7}:

- (a) a coastal Member, for activities in areas under its jurisdiction; or
- (b) a flag State Member, for activities by vessels flying its flag; or
- (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.

3.3 (a) An affirmative determination⁸ under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing.

(b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:

- (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;
- (ii) an opportunity to exchange relevant information⁹ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
- (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.

The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

⁴ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁵ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

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

⁷ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

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

⁹ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction¹⁰ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.3.

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.2 For the purpose of this Article, a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.¹¹

4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the EEZ shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

ARTICLE 5: OTHER SUBSIDIES

5.1 No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

5.2 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

5.3 A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.

¹⁰ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

¹¹ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.

ARTICLE 6: SPECIFIC PROVISIONS FOR LDC MEMBERS

A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any.

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall

- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}: type or kind of fishing activity for which the subsidy is provided;
- (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared¹⁴ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) fleet capacity in the fishery for which the subsidy is provided;
 - (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (v) catch data by species or group of species in the fishery for which the subsidy is provided.¹⁵

8.2 Each Member shall notify the Committee in writing on an annual basis of a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing.

¹² For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

¹³ For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding 0.8 per cent as per the most recent published FAO data as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

¹⁴ The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

¹⁵ For multispecies fisheries, a Member instead may provide other relevant and available catch data.

8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.

8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. A Member may meet this obligation by providing to the Committee an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information.

8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member considers that a notification or information under this Article has not been provided, the Member may bring the matter to the attention of such other Member or to the Committee.

8.6 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.¹⁶ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.

8.7 Members recognize that notification of a measure does not prejudice (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.

8.8 Nothing in this Article requires the provision of confidential information.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

9.1 There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.

9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

¹⁶ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

ARTICLE 10: DISPUTE SETTLEMENT

10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.¹⁷

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement¹⁸ shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

ARTICLE 11: FINAL PROVISIONS

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster¹⁹ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

11.2 (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.

- (b) A panel established pursuant to Article 10 of this Agreement shall make no findings with respect to any claim that would require it to base its findings on any asserted territorial claims or delimitation of maritime boundaries.²⁰

11.3 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea.²¹

11.4 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

¹⁷ Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

¹⁸ For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4 or Article 5 of this Agreement.

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

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

²¹ Including rules and procedures of RFMO/As.

11.5 This Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.

**ARTICLE 12: TERMINATION OF AGREEMENT IF COMPREHENSIVE DISCIPLINES
ARE NOT ADOPTED**

If comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated.

漁業補貼協定

2022 年 6 月 17 日部長決定

部長級會議；

注意到《馬拉喀什建立世界貿易組織協定》（《WTO 協定》）第 10 條第 1 款；

憶及 2017 年布宜諾斯艾利斯 WTO 第 11 屆部長級會議給予成員的授權，即下屆部長級會議應通過一項關於全面有效紀律的協定以禁止某些形式的助長過剩產能和過度捕撈的漁業補貼，並取消助長非法、未報告和無管制的捕撈活動的補貼，同時認識到發展中國家成員和最不發達國家成員的適當和有效的特殊和差別待遇應是談判組成部分。

決定如下：

1. 特此通過本決定所附修正《WTO 協定》的議定書，並提交各成員供接受。
2. 該議定書應特此開放供各成員接受。
3. 該議定書應依照《WTO 協定》第 10 條第 3 款生效。
4. 儘管有《漁業補貼協定》第 9.4 條，但是規則談判組應繼續以 WT/MIN (21) /W/5 和 WT/MIN (22) /W/20 號文件中的未決問題為基礎進行談判，以期向 WTO 第 13 屆部長級會議提出關於額外條款的建議，以達成一項關於漁業補貼的全面協定，包括進一步對某些形式的助長產能過剩和過度捕撈的漁業補貼制定紀律，同時認識到發展中國家成員和最不發達國家成員的適當和有效的特殊和差別待遇應是談判組成部分。

附件

關於修正《馬拉喀什建立世界貿易組織協定》的議定書

漁業補貼協定

世界貿易組織成員；

注意到根據《馬拉喀什建立世界貿易組織協定》（“《WTO 協定》”）第 10 條第 1 款通過的載於 WT/MIN (22) /33 - WT/L/1144 號文件中的部長級會議決定；

特此協議如下：

1. 《WTO 協定》附件 1A 應自本議定書根據第 4 款生效時起予以修正，加入本議定書附件中所列《漁業補貼協定》，位列《補貼與反補貼措施協定》之後。
2. 對本議定書條款不得作出任何保留。
3. 本議定書特此開放供各成員接受。
4. 本議定書應依照《WTO 協定》第 10 條第 3 款生效。¹
5. 本議定書應交存世界貿易組織總幹事，總幹事應迅速向每一成員提供一份經核證無誤的議定書副本及根據第 3 款的每一項接受的通報。
6. 本議定書應依照《聯合國憲章》第 102 條的規定予以登記。

2022 年 6 月 17 日訂於日內瓦，正本一份用英文、法文和西班牙文寫成，三種文本同等作準。

¹ 為計算根據《WTO 協定》第 10 條第 3 款的接受數量，對於歐洲聯盟為其本身及其成員國所提交的一份接受書，其接受數量應計為等於屬 WTO 成員的歐洲聯盟成員國的數量。

附件

漁業補貼協定

第 1 條：範圍

本協定適用於《補貼與反補貼措施協定》（SCM 協定）第 1.1 條範圍內、且具有該協定第 2 條範圍內的專向性的對海洋野生捕撈和海上與捕撈有關的活動的補貼。^{1,2,3}

第 2 條：定義

就本協定而言：

- (a) “魚類”指所有海洋生物資源物種，無論是否經過加工；
- (b) “捕撈”指搜尋、誘集、定位、捕捉、獲取或收穫魚類，或按照合理預期會導致誘集、定位、捕捉、獲取或收穫魚類的任何活動；
- (c) “與捕撈有關的活動”指支持捕撈或為捕撈作準備的任何作業活動，包括對先前未在一港口上岸的魚類進行上岸、包裝、加工、轉運或運輸，以及海上提供人員、燃料、漁具和其他物資補給；
- (d) “船舶”指用於、裝備用於或有意用於捕撈或與捕撈有關的活動的任何船舶、其他類型的大船或小船；
- (e) “經營者”指一船舶的所有人，或負責或指揮或控制該船舶的任何人。

¹ 為進一步明確，水產養殖和內陸漁業排除在本協定範圍之外。

² 為進一步明確，入漁協定項下的政府間支付不得視為本協定範圍內的補貼。

³ 為進一步明確，就本協定而言，一補貼應歸於授予它的成員，不考慮所涉任何船舶的旗幟或登記地或接受方的國籍。

第 3 條：助長非法、未報告和無管制捕撈的補貼⁴

3.1 任何成員不得給予或維持對從事非法、未報告和無管制（IUU）捕撈或從事支持 IUU 捕撈的與捕撈有關的活動的船舶或經營者⁵的任何補貼。

3.2 就第 3.1 條而言，如經下列任何一方作出一項確定性認定，則一船舶或經營者應被視為從事 IUU 捕撈^{6,7}：

- (a) 一沿海成員，對在其管轄區域內的活動作出的；或
- (b) 一船旗國成員，對於懸掛其旗幟的船舶的活動作出的；或
- (c) 一相關區域漁業管理組織或安排（RFMO/A），在其權限區域和物種範圍內，依照該區域漁業管理組織或安排的規則和程序及相關國際法作出的，包括通過提供及時通報和相關信息。

3.3 (a) 第 3.2 條下一項確定性認定⁸指一成員對一船舶或經營者從事 IUU 捕撈的最終認定和/或區域漁業管理組織/安排將一船舶或經營者列入從事 IUU 捕撈最終清單。

(b) 就第 3.2 條 (a) 項而言，如沿海成員的認定係根據相關事實信息作出，且已向船旗國成員及在知情時已向補貼成員提供下列各項，則第 3.1 條下的禁止應適用：

- (i) 就一船舶或經營者已因從事 IUU 捕撈而被暫時扣留以待進一步調查，或該沿海成員已啟動 IUU 捕撈調查，通過適當

⁴ “非法、未報告和無管制的捕撈（IUU 捕撈）”指聯合國糧農組織（FAO）2001 年通過的《預防、阻止和消除非法、未報告和無管制捕撈國際行動計劃》第 3 段中所列活動。

⁵ 就第 3 條而言，“經營者”一詞指在第 2 條 (e) 款範圍內、在 IUU 違規捕撈發生時的經營者。為進一步明確，禁止向從事 IUU 捕撈的經營者給予或維持補貼的規定適用於向海上捕撈和與捕撈有關的活動提供的補貼。

⁶ 本條中的任何規定不得解釋為要求成員啓動 IUU 捕撈調查或作出 IUU 捕撈認定。

⁷ 本條中的任何規定不得解釋為影響該條所列實體在相關國際協定項下的權限或給予所列實體作出 IUU 捕撈認定的新的權利。

⁸ 本條中的任何規定不得解釋為推遲或影響一項 IUU 捕撈認定的有效性或可執行性。

渠道作出的及時通報，其中包含任何相關事實信息和適用的法律、法規、行政程序或其他相關措施；

- (ii) 在作出認定前的一次交流相關信息⁹的機會，以便使此類信息在作出最終認定時得到考慮。該沿海成員可對開展此種信息交流指定方式和時限；以及
- (iii) 關於最終認定的通報，並通報實施的任何制裁措施，包括其期限（如適用）。

沿海成員應將確定性認定向第 9.1 條中所規定的委員會（本協定中稱“委員會”）作出通報。

3.4 補貼成員在確定第 3.1 條中的禁止的適用期限時，應考慮船舶或經營者實施 IUU 捕撈的性質、嚴重性和重複發生情況。第 3.1 條的禁止的適用期限應至少等同於觸發該項禁止的認定所產生的制裁措施¹⁰的有效時間、或至少等同於該船舶或經營者被區域漁業管理組織/安排列在清單上的期限，以時間長者為準。

3.5 補貼成員應依照第 8.3 條向委員會通報根據第 3.1 條所採取的措施。

3.6 如一港口國成員向一補貼成員通報其有明確理由認為在其一港口中的一船舶從事了 IUU 捕撈，則該補貼成員應適當考慮收到的信息並對其補貼採取其認為適當的行動。

3.7 每一成員應設有法律、法規和/或行政程序，以保證不給予或維持第 3.1 條中所指補貼，包括本協定生效時現存的此類補貼。

3.8 自本協定生效之日起 2 年內，發展中國家成員，包括最不發達國家成

⁹ 例如，此點可包括如船旗國或補貼成員提出請求而進行對話或書面信息交流的一次機會。

¹⁰ 制裁措施的終止由作出第 3.2 條中所指認定的主管機關的法律或程序規定。

員，在不超出其專屬經濟區及在其專屬經濟區之內給予或維持的補貼應免於根據本協定第 3.1 條和第 10 條所採取的行動。

第 4 條：有關過度捕撈魚類種群的補貼

4.1 任何成員不得給予或維持有關過度捕撈魚類種群的捕撈或與捕撈有關的活動的補貼。

4.2 就本條而言，如一魚類種群經對捕撈發生區域具有管轄權的沿海成員或經相關區域漁業管理組織/安排對在其權限區域和物種範圍內，根據其可獲最佳科學證據，認定屬過度捕撈，則該魚類種群屬過度捕撈。

4.3 儘管有第 4.1 條的規定，但是實施如第 4.1 條中所指補貼或其他措施旨在將該種群重建至生物可持續水平，則一成員可給予或維持此類補貼。¹¹

4.4 自本協定生效之日起 2 年內，發展中國家成員，包括最不發達國家成員，在不超出其專屬經濟區及在其專屬經濟區之內給予或維持的補貼應免於根據根據本協定第 4.1 條和第 10 條所採取的行動。

第 5 條：其他補貼

5.1 任何成員不得給予或維持對在沿海成員或沿海非成員管轄範圍以外和相關區域漁業管理組織/安排權限範圍以外區域的捕撈或與捕撈有關的活動提供的補貼。

5.2 一成員在對不懸掛該成員旗幟的船舶給予補貼時，應給予特別注意並採取適當的克制。

5.3 一成員在對有關狀況不明種群的捕撈或與捕撈有關的活動給予補貼

¹¹ 就本款而言，生物可持續水平指對捕撈或與捕撈有關的活動所發生的區域擁有管轄權的一沿海成員所確定的水平，使用例如最大可持續產量 (MSY) 等參考點或其他參考點，並與該漁業可獲得的捕撈數據相匹配；或由一相關區域漁業管理組織/安排在其權限區域和種群範圍內所確定的水平。

時，應給予特別注意並採取適當的克制。

第 6 條：最不發達國家特定條款

一成員在提出涉及一最不發達國家成員的事項時應採取適當的克制，所探討的解決辦法應考慮所涉最不發達國家成員的具體情況（如有）。

第 7 條：技術援助和能力建設

應向發展中國家成員，包括最不發達國家成員，提供有針對性的技術援助和能力建設援助，以實施本協定項下的紀律。為支持此種援助，應與聯合國糧農組織和國際農業發展基金等相關國際組織合作，設立一自願性 WTO 籌資機制。WTO 成員對該機制的捐款應屬完全自願，且不得使用經常預算資源。

第 8 條：通報和透明度

8.1 在不損害《補貼與反補貼措施協定》第 25 條的情況下及為加強和提高漁業補貼通報，並為更有效監督漁業補貼承諾的履行情況，每一成員應

- (a) 作為其根據《補貼與反補貼措施協定》^{12,13} 第 25 條漁業補貼定期通報的一部分提供下列信息：所補貼的捕撈活動類別或種類；
- (b) 在可能的限度內，作為其根據《補貼與反補貼措施協定》^{12,13} 第 25 條漁業補貼定期通報的一部分提供下列信息：
 - (i) 所補貼的漁業中魚類種群的狀況（例如過度捕撈、最大限度可持續捕撈或捕撈不足）和所使用的參考點，以及此類

¹² 就第 8.1 條而言，除提供《補貼與反補貼措施協定》第 25 條要求的所有信息及補貼與反補貼措施委員會使用的任何調查問卷（例如 G/SCM/6/Rev.1 號文件）中所規定的信息外，成員還應提供此信息。

¹³ 對於最不發達國家成員，及對於根據 WTO 秘書處散發的聯合國糧農組織最新公佈數據佔全球海洋魚類捕撈年產量的份額不超過 0.8% 的發展中國家成員，本項中的額外信息可每 4 年通報一次。

種群是否與任何其他成員共享¹⁴或由區域漁業管理組織/安排管理；

- (ii) 對相關魚類種群設立的養護和管理措施；
- (iii) 所補貼的漁業中的船隊產能；
- (iv) 受益於補貼的漁船或船舶的名稱和識別號碼；以及
- (v) 所補貼的漁業中按物種或物種群分列的漁獲物數據。¹⁵

8.2 每一成員應每年書面通報委員會其已經確定的、從事 IUU 捕撈活動的船舶和經營者名單。

8.3 每一成員應在本協定生效之日起 1 年內，將為保證實施和管理本協定的現有或已採取的措施告知委員會，包括為實施第 3 條、第 4 條和第 5 條所規定的禁止所採取的步驟。每一成員還應將此後對此類措施的任何變更以及為實施第 3 條所規定的禁止而採取的新措施迅速告知委員會。

8.4 每一成員應在本協定生效之日起 1 年內向委員會提供一份包含其與本協定相關的法律、法規和行政程序的漁業制度的說明，並將此後的任何修改迅速告知委員會。一成員可通過向委員會提供其中列出該信息的、該成員的或其他適當的官方網頁的最新電子鏈接以履行這一義務。

8.5 一成員可請求通報成員就其根據本條提供的通報和信息提供額外信息。該通報成員應儘快以書面形式全面回應該請求。如一成員認為本條下的通報或信息未予提供，則該成員可提請該另一成員或委員會注意此事項。

¹⁴ “共享種群”一詞指出現在兩個或兩個以上沿海成員的專屬經濟區之內或既出現在其專屬經濟區之內又出現在其專屬經濟區之外且毗鄰區域的種群。

¹⁵ 對於多種群捕撈，一成員可提供其他相關且可獲得的捕撈數據作為替代。

8.6 自本協定生效時起，成員應以書面形式向委員會通報其作為成員方的任何區域漁業管理組織/安排。該通報應至少包括設立該區域漁業管理組織/安排的法律文件、其權限區域和物種、所管理魚類種群的狀態信息、養護和管理措施的說明、其規範其 IUU 捕撈認定的規則和程序以及其已認定從事 IUU 捕撈的船舶和/或經營者的最新清單。該通報可由成員單獨提交或由一組成員聯合提交。¹⁶ 該信息的任何變化應迅速通報委員會。委員會秘書處應保存一份根據本條通報的區域漁業管理組織/安排清單。

8.7 成員確認，關於一項措施的通報不預斷（a）該措施在《1994 年關稅與貿易總協定》、《補貼與反補貼措施協定》或本協定項下的法律地位；（b）該措施在《補貼與反補貼措施協定》項下的影響；或（c）該措施本身的性質。

8.8 本條中的任何規定不要求提供機密信息。

第 9 條：機構安排

9.1 特此設立漁業補貼委員會，由各成員的代表組成。委員會應選舉自己的主席，每年應至少召開 2 次會議，或根據本協定相關規定所設想的應任何成員請求召開會議。委員會應履行根據本協定或由各成員對其指定的職責，並應向各成員提供機會就與本協定的運用或促進其目標實現相關的任何事項進行磋商。WTO 秘書處應擔任委員會的秘書處。

9.2 委員會應不少於每 2 年審議根據第 3 條和第 8 條以及本條提供的所有信息。

9.3 委員會應每年審議本協定的實施和運用情況，同時考慮本協定的目

¹⁶ 這一義務可通過提供其中列出該信息的、該通報成員的或其他適當的官方網頁的最新電子鏈接的方式而得以履行。

標。委員會應每年將此類審議所涵蓋期間的進展情況告知貨物貿易理事會。

9.4 不遲於本協定生效之日後 5 年並在此後每 3 年，委員會應審議本協定的運用情況，以期確定為改進本協定運用所必需的全部修改，同時考慮本協定的目標。在適當情況下，委員會可向貨物貿易理事會提交修正本協定文本的建議，特別考慮本協定實施過程中取得的經驗。

9.5 委員會應與聯合國糧農組織及漁業管理領域的其他相關國際組織，包括相關區域漁業管理組織/安排，保持密切聯繫。

第 10 條：爭端解決

10.1 由《爭端解決諒解》（DSU）詳述和適用的《1994 年關稅與貿易總協定》第 22 條和第 23 條的規定適用於本協定項下的磋商和爭端解決，除非本協定中另有具體規定。¹⁷

10.2 在不損害第 1 款的前提下，《補貼與反補貼措施協定》¹⁸ 第 4 條的規定應適用於本協定第 3 條、第 4 條和第 5 條下的磋商和爭端解決。

第 11 條：最後條款

11.1 除第 3 條和第 4 條中所規定的外，本協定任何條款不得阻止一成員提供救災¹⁹ 補貼，只要該補貼：

- (a) 限於一特定災害的救濟；

¹⁷ 《1994 年關稅與貿易總協定》第 23 條第 1 款（b）項和（c）項以及《爭端解決諒解》第 26 條不得適用於本協定項下的爭端解決。

¹⁸ 就本條而言，《補貼與反補貼措施協定》第 4 條中的“禁止性補貼”一詞指本協定第 3 條、第 4 條和第 5 條中所禁止的補貼。

¹⁹ 為進一步明確，本規定不適用於經濟或金融危機。

- (b) 限於受影響的地理區域；
- (c) 有時限性；以及
- (d) 對於重建補貼，限於將受影響的漁業和/或受影響的船隊恢復至災前水平。

11.2 (a) 本協定，包括與本協定有關的任何調查結果、建議和仲裁結果，不對領土主張或海洋劃界產生任何法律影響。

- (b) 根據本協定第 10 條設立的專家組不應就任何訴請提出調查結果，如該訴請要求其以由任何單方面主張的領土主張或海洋劃界為基礎提出調查結果。²⁰

11.3 本協定任何條款的解釋和適用不得損害成員依據包括海洋法在內的國際法享有的管轄權、權利和義務。²¹

11.4 除非另有規定，否則本協定任何條款不意味一成員受其未參加或未作為合作非成員方的區域漁業管理組織/安排的措施或決定的約束，或對任何此類區域漁業管理組織/安排予以承認。

11.5 本協定不修改《補貼與反補貼措施協定》所規定的任何權利和義務或使此類權利和義務無效。

第 12 條：全面紀律未獲通過情況下的協定終止

如在本協定生效後 4 年內全面紀律未獲通過，除非總理事會另有決定，否則本協定即應立即終止。

²⁰ 該限制也應適用於根據《爭端解決諒解》第 25 條設立的仲裁人。

²¹ 包括區域漁業管理組織/安排的規則和程序。