

## WTO 第二波漁業補貼談判

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### 摘要

面臨全球漁業資源枯竭，世界貿易組織自 2001 年起推動漁業補貼談判，歷時二十餘年，終於在 2022 年舉行的第 12 屆部長會議上達成共識，正式通過《漁業補貼協定》。惟當時各會員就聯合國永續發展目標 14.6 中要求處理的「產能過剩及過度捕撈」問題仍存有歧異，遂留至第二波談判續行協商。此第二波談判初期雖只是知識分享以及原則之討論，但自本 (2023) 年度的第 5 次「漁業週」起，已開始討論具體條文草案。草案之核心條文雖原則上禁止過漁之補貼，但亦允許符合永續要求之補貼例外；惟在證明是否符合永續標準上，漁業補貼大國之通知義務，無論是在通知之時間與內容上，均高於對一般會員之要求。此種將會員責任二元劃分的規範方式，並非所有會員皆支持。另一方面，何謂補貼大國？應依何種數據為準？也有待進一步討論。儘管如此，WTO 秘書長對在第 13 屆部長會議達成協議的可能性，仍抱持樂觀態度。會員陸續批准 2022 年《漁業補貼協定》之事實也顯示多數會員有意願落實海洋資源之永續維護。

2022 年 6 月 17 日，WTO 於第 12 屆部長會議 (12th Ministerial Conference, MC12) 正式通過《漁業補貼協定》<sup>1</sup>，禁止造成全球漁業資源大規模枯竭之主要因素——有害的漁業補貼，海洋永續發展至此也終於邁出關鍵一步<sup>2</sup>。

由於《漁業補貼協定》為首項全面實現聯合國永續發展目標 (SDG) 之協定，實屬 WTO 會員所取得之歷史性成就<sup>3</sup>。其亦為首件著眼於環境議題的 WTO 多邊協定，同時是 WTO 成立以來第二個達成的多邊協定<sup>4</sup>。為使該協定生效，須有三分之二 (即 110 個) 會員批准並將其接受書交存 WTO<sup>5</sup>。

<sup>1</sup> WTO Ministerial Decision of 17 June 2022 on Agreement on Fisheries Subsidies, WTO Doc. WT/MIN(22)/33, WT/L/1144 (June 22, 2022).

<sup>2</sup> WTO Rule Division, *The WTO Agreement on Fisheries Subsidies*, [https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_factsheet\\_e.pdf](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_factsheet_e.pdf) (last visited Nov. 27, 2023).

<sup>3</sup> *Id.* at 1.

<sup>4</sup> WTO Rule Division, *supra* note 2, at 1. WTO 於 1995 年成立以來第一個生效的多邊協定為《貿易便捷化協定》。Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Trade Facilitation), Nov. 27, 2014, WTO Doc. WT/L/940 (Nov. 28, 2014).

<sup>5</sup> WTO Rule Division, *supra* note 2, at 3; Marrakesh Agreement Establishing the World Trade Organization art. X.3, Apr. 15, 1994, 1867 U.N.T.S. 161.

## 壹、MC12《漁業補貼協定》未盡之處

儘管《漁業補貼協定》不准補貼從事「非法、未報告及不受規範 (IUU)」之捕撈的漁船或營運者，亦禁止補貼對已過度捕撈之魚種所進行之捕撈活動<sup>6</sup>，但並未明文處理導致產能過剩及過度捕撈之補貼<sup>7</sup>。結果就是《漁業補貼協定》不僅比 SDG 細項目標 14.6 所訂定的最後期限 (2020 年) 晚了 18 個月才達成，且在該細項目標的第 1 重點——「禁止造成過度捕撈之補貼」方面亦徹底失敗<sup>8</sup>。

為彌補缺少的這一塊拼圖，MC12 要求規則談判小組繼續談判，以便向第 13 屆部長會議 (13th Ministerial Conference, MC13) 建議為《漁業補貼協定》之完整性而需增訂之條文，包括透過對導致產能過剩及過度捕撈之特定形式補貼的進一步規範<sup>9</sup>。惟恐延長談判後卻一無所成，故協定中亦設有如同定時炸彈之自毀條款：規定若在《漁業補貼協定》生效後四年內未能通過上述所謂的完整規範時，協定應立即終止<sup>10</sup>。

## 貳、第二波漁業補貼談判之進展

為遵循前述 MC12 之決議並及時向 MC13 提出建議之新增條文，WTO 會員繼 2022 年下半年的腦力激盪<sup>11</sup>，以及為此舉辦的二場知識分享工作坊之後<sup>12</sup>，於今 (2023) 年 2 月下旬宣布為談判所做準備已經就緒<sup>13</sup>，並自 3 月起密集展開談判，至今已進行了 6 回合，每回合時間約莫 1 週，故又稱為「漁業週 (Fish Week)」

<sup>6</sup> Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies) arts. 3-4, June 17, 2022, WTO Doc. WT/L/1144 (June 22, 2022) [hereinafter AFS].

<sup>7</sup> Peter Ungphakorn, *The 2022 WTO Fisheries Subsidies Agreement — the Missing Piece*, TRADE BETA BLOG (Nov. 5, 2022), <https://tradebetablog.wordpress.com/2022-fisheries-subsidies-missing-piece/>. 關於漁業補貼協定談判在第 12 屆部長會議前，會員立場分歧之議題，包括消弭導致產能過剩及過度捕撈之補貼一節，可參見本中心經貿法訊 2022 年之報導：蔡家卉，WTO 漁業補貼談判之最新進展，經貿法訊，300 期，頁 1-6，2022 年 5 月 25 日，<http://www.tradelaw.nccu.edu.tw/epaper/no300/1.pdf>。

<sup>8</sup> G.A. Res. 70/1, at 24, Transforming Our World: The 2030 Agenda for Sustainable Development (Sept. 25, 2015).

<sup>9</sup> WTO Ministerial Decision of 17 June 2022 on Agreement on Fisheries Subsidies, *supra* note 1, para. 4.

<sup>10</sup> AFS, *supra* note 6, art. 12.

<sup>11</sup> *Members Brainstorm on Initiating “Second Wave” of WTO Fisheries Subsidies Talks*, WTO (Oct. 10, 2022), [https://www.wto.org/english/news\\_e/news22\\_e/fish\\_10oct22\\_e.htm](https://www.wto.org/english/news_e/news22_e/fish_10oct22_e.htm).

<sup>12</sup> *Members Start Knowledge Building for Second Wave of Fisheries Subsidies Negotiations*, WTO (Nov. 23, 2022), [https://www.wto.org/english/news\\_e/news22\\_e/fish\\_23nov22\\_e.htm](https://www.wto.org/english/news_e/news22_e/fish_23nov22_e.htm).

<sup>13</sup> *Chair Reports Positive Outlook for Fisheries Subsidies Negotiations, Readies “Fish Weeks”*, WTO (Feb. 20, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_20feb23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_20feb23_e.htm).

談判，分別是在今年的 3 月<sup>14</sup>、4 月<sup>15</sup>、6 月<sup>16</sup>、7 月<sup>17</sup>、9 月<sup>18</sup>、以及 10 月舉行<sup>19</sup>。

於 9 月之第 5 次「漁業週」談判會議前，今年才接任主席的冰島大使古納爾松 (Einar Gunnarsson) 根據過去的提案討論結果，整理出一份僅有 4 條文之談判文本草案，依序為 A 條：導致產能過剩及過度捕撈之補貼、B 條：特殊與差別待遇、C 條：通知及透明化、以及 D 條：其他產能過剩及過度捕撈之補貼<sup>20</sup>。由於會員同意以該文本展開具體條文之談判，終於使談判進入條文草擬階段，並於第 6 次「漁業週」談判會議完成逐條一讀<sup>21</sup>。

上述談判文本草案之核心規範為 A 條，其規範重點如下。

### 一、雖禁止過漁之補貼但符合永續要求者不在此限；並訂有推定為禁止補貼之清單

A.1 條涵蓋草案中有關「導致產能過剩及過度捕撈之補貼」的核心規範<sup>22</sup>。其係基於混合的規範模式，結合禁止「導致產能過剩及過度捕撈之補貼」的明文，以及推定為禁止補貼的清單<sup>23</sup>；除此之外，再加上基於永續因素而對禁止所加諸

<sup>14</sup> *First Fish Week Concludes with “Illuminating” Discussion of Negotiating Objectives*, WTO (Mar. 24, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_24mar23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_24mar23_e.htm).

<sup>15</sup> *WTO Members Advance Fisheries Subsidies Negotiations at Second Fish Week*, WTO (Apr. 28, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_28apr23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_28apr23_e.htm).

<sup>16</sup> *Members Consider New Proposals on Subsidies Contributing to Overcapacity and Overfishing*, WTO (June 9, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_09jun23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_09jun23_e.htm).

<sup>17</sup> *Fisheries Subsidies Negotiations Ramp Up Ahead of Text-Based Discussions in the Autumn*, WTO (July 14, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_14jul23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_14jul23_e.htm).

<sup>18</sup> *Fisheries Subsidies Chair Introduces Draft Text, Seeks Members’ Views at Fifth “Fish Week”*, WTO (Sept. 18, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_18sep23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_18sep23_e.htm).

<sup>19</sup> *WTO Members Embark on Sixth “Fish Week” Ahead of Senior Officials Meeting*, WTO (Oct. 9, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_09oct23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_09oct23_e.htm).

<sup>20</sup> WTO Unofficial Room Document (Negotiating Group on Rules - Fisheries Subsidies), *Draft Disciplines on Subsidies Contributing to Overcapacity and Overfishing, and Related Elements*, WTO Doc. RD/TN/RL/174 (Sept. 4, 2023), available at [https://tradebetablog.files.wordpress.com/2023/09/2023-09-04\\_rd-tn-rl-174\\_draft-text.pdf](https://tradebetablog.files.wordpress.com/2023/09/2023-09-04_rd-tn-rl-174_draft-text.pdf) [hereinafter Draft Text]; WTO, *supra* note 18.

<sup>21</sup> *Members Prepare for Line-by-Line Negotiations on Draft Fisheries Subsidies Text in October*, WTO (Sept. 22, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_18sep23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_18sep23_e.htm); *Members Complete Sixth Fish Week This Year of Fisheries Subsidies Negotiations*, WTO (Oct. 13, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/fish\\_13oct23\\_e.htm](https://www.wto.org/english/news_e/news23_e/fish_13oct23_e.htm).

<sup>22</sup> WTO Unofficial Room Document (Negotiating Group on Rules - Fisheries Subsidies), *Addendum: Chair’s Explanatory Note Accompanying RD/TN/RL/174: Draft Disciplines on Subsidies Contributing to Overcapacity and Overfishing, and Related Elements*, at 3, WTO Doc. RD/TN/RL/174/Add.1 (Sept. 4, 2023), available at [https://tradebetablog.files.wordpress.com/2023/09/2023-09-04\\_rd-tn-rl-174-add.1\\_chair-explanation.pdf](https://tradebetablog.files.wordpress.com/2023/09/2023-09-04_rd-tn-rl-174-add.1_chair-explanation.pdf) [hereinafter Chair’s Note].

<sup>23</sup> *Id.* at 3 (“The drafting is based on a [‘]hybrid approach[’] combining a statement of the prohibition and a list of presumptively prohibited fisheries subsidies”); Draft Text, *supra* note 20, art. A.1 (“No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing. For the purpose of this paragraph, subsidies that contribute to overcapacity or overfishing include: . . .”).

之限制條件<sup>24</sup>。

對於上述規範模式，主席表示有部分成員建議修改清單成為別的形式，或將清單一分為二：一為涵蓋最有害補貼的完整清單，一為列舉導致產能過剩及過度捕撈之補貼的指示性清單，但因為這些想法未被詳細探討，故未被納入草案中<sup>25</sup>。此外，也有會員呼籲採取以清單為基礎的規範模式，而非混合的規範模式；對此，主席表示將由會員在後續的文本討論中決定是否維持目前 A.1 條的規範架構，以及如何調整草案文字<sup>26</sup>。

## 二、加重漁業補貼大國有關永續目的之舉證責任與通知義務

A.1 條受到 A.1.1 條與 A.1.2 條規定之限制，因此需與後兩者一併解讀。針對 A.1 條之禁止規定，A.1.1 條與 A.1.2 條建立以永續性為基礎之兩種例外<sup>27</sup>。A.1.1 條所創建的第一種例外，具有一般適用性<sup>28</sup>。依該條規定，若提供補貼的會員非屬於 A.1.2 條列之大國，並在其漁業補貼的定期通知中表明有執行將相關魚種數量維持在生物永續水準之措施，則其補貼並不違反 A.1 條規定<sup>29</sup>。第二種以永續性為基礎的例外則是規定於 A.1.2 條<sup>30</sup>。該規定之制訂乃因各界普遍呼籲對補貼大國施行更為嚴格的永續性測試<sup>31</sup>。

關於第二種例外有兩項關鍵要素<sup>32</sup>：

1. 如何定義「補貼大國」？共有多少會員符合補貼大國之定義？判定依據是實際補貼規模還是補貼漁獲量佔其總漁獲量之百分比？使用何種數據來源？草案中有許多 X 代號以及其他待決之細節<sup>33</sup>，皆必須仰賴談判以定。

<sup>24</sup> Chair's Note, *supra* note 22, at 3 (“The drafting is based on . . . , along with a qualification to the prohibition based on sustainability elements.”).

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Id.* at 3 (“Article A.1 is qualified by, and thus needs to be read together with, Articles A.1.1 and A.1.2. Between them, these latter provisions would establish a two-tiered sustainability-based qualification to the prohibition in Article A.1.”); Draft Text, *supra* note 20, arts. A.1.1-A.1.2 .

<sup>28</sup> Chair's Note, *supra* note 22, at 4.

<sup>29</sup> Draft Text, *supra* note 20, art. A.1.1 (“A subsidy is not inconsistent with Article A.1 if a subsidizing Member not falling under Article A.1.2 demonstrates in its regular notifications of fisheries subsidies under Article 25 of the SCM Agreement and Article 8 of the Agreement on Fisheries Subsidies that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.”).

<sup>30</sup> Chair's Note, *supra* note 22, at 4.

<sup>31</sup> *Id.* at 4.

<sup>32</sup> Peter Ungphakorn, *New Draft Starts Text-Based Rush for WTO Fish Subsidies' "Missing Piece"*, TRADE BETABLOG, <https://tradebetablog.wordpress.com/2023/09/08/draft-fish-subsidies-missing-piece-sep-2023/> (last updated Sept. 19, 2023).

<sup>33</sup> Draft Text, *supra* note 20, art. A.1.2 (a) (“The [X] largest providers of fisheries subsidies by annual aggregate value according to [ . . . ] shall be deemed to be providing subsidies to fishing or fishing related activities that contribute to overcapacity and overfishing.”).

2. 更嚴格的通知要求與永續性測試。由於漁業補貼大國被視為是有提供導致產能過剩及過度捕撈之補貼的會員<sup>34</sup>，故除年度通知外，這些會員有責任透過補貼設計與生效後立即提交之通知，顯示其已採取措施維持相關魚群種類的生物永續水準<sup>35</sup>。另外亦須提交相較一般情況下更詳盡之資訊，諸如船隊規模<sup>36</sup>。

### 參、歧見仍深

在上述主席所擬之談判文本的幫助下，本談判好不容易終得以進入具體條文之討論，但會員間歧見仍深，譬如就有部分可能被認定為補貼大國的會員希望能夠刪除 A.1.2 條<sup>37</sup>。

另外，像是特殊與差別待遇 (B 條) 也一直是談判中的癥結所在，因為美國等國呼籲漁業補貼之禁止規範應普遍適用於全體<sup>38</sup>，而其他屬開發中國家的會員 (特別是印度) 則主張應提供更多的優惠待遇<sup>39</sup>。印度的修改提案包括提高「微量補貼」的門檻 (用以確定哪些會員是屬於可適用豁免的「小型」補貼國)<sup>40</sup>，以及允許各國自行選擇「小型」的判斷依據 (其在全球漁獲量中所佔份額或是補貼規模)<sup>41</sup>。

更令人擔憂的是甚至有會員想要重啟 MC12 已經通過之《漁業補貼協定》內容，包括：(1) 將燃料補貼納入 2022 年協定之第 1 條—即協定之適用「範圍」<sup>42</sup>；(2) 若業者未向政府支付入漁費，則將原《漁業補貼協定》第 1 條註腳 2 已

<sup>34</sup> *Id.*

<sup>35</sup> Chair's Note, *supra* note 22, at 4 ("The consequence of this deeming is that these Members would bear the burden of demonstrating, through a notification to be submitted immediately after a subsidy is designed and in effect, that measures are implemented to maintain at a biologically sustainable level the stocks in the relevant fishery or fisheries.").

<sup>36</sup> Draft Text, *supra* note 20, art. A.1.2 (b).

<sup>37</sup> Peter Ungphakorn, *WTO Fish Talks Complete Draft Read-through with Little Real Negotiation*, TRADE BETA BLOG, <https://tradebetablog.wordpress.com/2023/10/16/wto-fish-read-through-little-negotiation/> (last updated Oct. 16, 2023).

<sup>38</sup> LIANA WON, CONG. RSCH. SERV., IF11929, WORLD TRADE ORGANIZATION FISHERIES SUBSIDIES NEGOTIATIONS: VERSION 5 (2023) ("With regard to SDT, the United States supports some flexibilities for developing economies (including LDCs), but does not support broad and permanent exceptions in the fisheries agreement.").

<sup>39</sup> Hannah Monicken, *New WTO Fisheries Text Places Greater "Scrutiny" on Largest Subsidizers*, INSIDE U.S. TRADE, Vol. 41, No. 39, Sept. 29, 2023; Communication from India, WTO Unofficial Room Document (Negotiating Group on Rules - Fisheries Subsidies), *Provisions on the Scope for the Comprehensive Agreement on Fisheries Subsidies and Subsidies Contributing to Overcapacity and Overfishing (OCOF)*, WTO Doc. RD/TN/RL/175 (Sept. 19, 2023), available at [https://tradebetablog.files.wordpress.com/2023/10/india\\_paper\\_rd-tn-rl-175.pdf](https://tradebetablog.files.wordpress.com/2023/10/india_paper_rd-tn-rl-175.pdf) [hereinafter India's Paper].

<sup>40</sup> Ungphakorn, *supra* note 37; India's Paper, *supra* note 39, para. 30 ("x. De-minimis: The disciplines under Article 5.1, Article 5.3 and Article 5.4 shall not apply to any developing country Member whose share of annual marine capture fish production is less than [one percent] of the Global annual marine capture fish production.").

<sup>41</sup> India's Paper, *supra* note 39, para. 25.

<sup>42</sup> Peter Ungphakorn, *WTO Fish Talks Face Tough Week as India Seeks to Reopen 2022 Deal*, TRADE BETA BLOG, <https://tradebetablog.wordpress.com/2023/10/06/wto-fish-talks-india-reopen-2022->

明文排除之入漁協定下的政府間付款視為補貼<sup>43</sup>；(3) 進一步將「多魚種捕撈 (multi-species fishing)」排除於第 4 條有關過漁群種的約束之外<sup>44</sup>。

#### 肆、十月資深官員會議樂觀預期 MC 13 成果

為籌備 MC 13，WTO 在 10 月 23 日至 24 日召開為期兩天的資深官員會議，以評估於 MC13 可收割之成果<sup>45</sup>。根據會議主席（秘書長及總理事會主席）之觀察：有關《漁業補貼協定》之第二波談判，在 MC13 達成下列兩項成果的前景依然樂觀可期——即完成第二波談判，以及《漁業補貼協定》生效，因兩者皆如預期發展<sup>46</sup>。對於前者，因為主席在 9 月份漁業週中提出的文本草案已獲得廣泛支持，現在各會員所需做的就是達成必要的妥協<sup>47</sup>。至於後者，目前接受 2022 年協定的會員數已達 52 個——近乎生效所需總數的一半<sup>48</sup>！此外，許多資深官員亦宣佈本國之批准程序已至最後階段，不久後即得以將本國之接受書交存 WTO<sup>49</sup>。

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deal/#generally (last updated Oct. 16, 2023); India's Paper, *supra* note 39, para. 7 (“[T]he inclusion of Non-specific fuel subsidies under the scope for the comprehensive agreement is proposed.”).

<sup>43</sup> AFS, *supra* note 6, art. 1, n.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.”); Ungphakorn, *supra* note 42; India's Paper, *supra* note 39, para 30.

<sup>44</sup> India's Paper, *supra* note 39, para. 8 (“[I]t is proposed that the disciplines on overfished stocks (Article 4) under this Agreement shall not apply to multi-species fishing and fishing related activities.”).

<sup>45</sup> *Senior Officials Meeting Paves Way for Progress on Deliverables at MC13*, WTO (Oct. 24, 2023), [https://www.wto.org/english/news\\_e/news23\\_e/gc\\_24oct23\\_e.htm](https://www.wto.org/english/news_e/news23_e/gc_24oct23_e.htm).

<sup>46</sup> WTO Senior Officials Meeting, *Chairpersons' Summary*, WTO Doc. TN/C/22, para. 4.1 (Oct. 24, 2023).

<sup>47</sup> *Id.* para. 4.2.

<sup>48</sup> *Id.* para. 4.3.

<sup>49</sup> *Id.* para. 4.3.