

Fishing for a solution: using technical assistance and capacity building to unlock a fair and ambitious fisheries subsidies deal

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Four key takeaways:

1. To secure a **fair and ambitious** fisheries subsidies agreement (“FSA”), negotiators should strive for a technical assistance and capacity building (“TACB”) package that enables all World Trade Organization (“WTO”) Members — irrespective of development status — to implement fully the FSA obligations and flexibilities.
2. To this end, negotiators should build on existing TACB principles under the **Trade Facilitation Agreement (“TFA”)**, aiming for a simpler and clearer mechanism.
3. Building on the TFA, a TACB mechanism should meet three principles: (1) **tailored and specific** to the terms of agreement and the needs of developing Members, (2) **transparent** in its format, and (3) **accountable** in its results.
4. The **timing of FSA implementation should be linked to the delivery of TACB**. An **annex** to this note sets out in detail how this could work.

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WTO Members are hoping to conclude a fisheries subsidies agreement (“FSA”) by the 12th WTO Ministerial Conference, which ends on 3 December 2021. Although good progress has been made, the Membership remains divided on difficult issues that will define the overall balance of rights and obligations struck in the agreement.

Currently, the two thorniest outstanding issues are: (1) the extent of the permanent exceptions — so-called “in-built flexibilities” — which would allow all WTO Members to continue to grant certain otherwise-prohibited subsidies, and (2) the extent of the special and differential treatment (“SDT”) granted to developing and least developed country (“LDC”) Members, including technical assistance and capacity building (“TACB”).²

This note does not address all these issues nor take a position on the merits of the outstanding issues. Instead, we take the current draft FSA text as it stands and focus on crafting an effective TACB mechanism that would enable LDC and developing Members to implement all parts of the FSA fully.

Although we do not take a position on the outstanding issues, we recognize that they are interconnected puzzle pieces. In particular, in the balance of FSA rights and obligations, there is a critical interconnection between the proposed flexibilities and TACB. As we explain below, if the proposed flexibilities are accepted, they risk creating a permanent imbalance in the agreement — what one delegate calls an “inversion of responsibilities” that would work to the benefit of developed Members, who have the capacity to use the flexibilities, and to the detriment of LDC/developing Members, who do not. To avoid this outcome, puzzle pieces must be connected. If the Members agree to the flexibilities, they would create new TACB needs that would have to be met to ensure that the flexibilities can be used by LDC and developing Members.

Against that background, we offer thoughts on how Members might progress negotiations on TACB. In an annex, we provide additional details on how to design a TACB mechanism under the FSA.

I. The time is ripe for consideration of an effective TACB mechanism

Detailed discussions on technical assistance have only recently begun in the negotiations. Indeed, in May, Ambassador Wills, the Chair of the Negotiating Group, noted that a TACB discussion would be “*timely*”;³ and in June, he recalled that TACB “*has not been discussed recently*.”⁴ In June, the WTO Director-General Ngozi Okonjo-Iweala (“DG”) proposed the establishment of a WTO funding mechanism to finance TACB for FSA implementation.⁵ In July, the DG and Ambassador Wills circulated a “Concept Note” on such a funding

² WTO news item, WTO Members Edge Closer to Fisheries Subsidies Agreement (July, 15 2021), available [here](#).

³ Chair’s Explanatory Note Accompanying TN/RL/276 (TN/RL/W/276/Add. 1, 11 May 2021), (“May Explanatory Note”), para. 116.

⁴ Chair’s Explanatory Note Accompanying TN/RL/276/Rev. 1 (TN/RL/W/276/Rev. 1/Add. 1, June 30, 2021) (“June Explanatory Note”), para. 78.

⁵ June Explanatory Note, Annex I.

mechanism.⁶ The time is, therefore, ripe for detailed consideration of this important aspect of the agreement.

The DG has recognized that WTO agreements have not always delivered effective technical assistance. In her own words, she said that there is “*great scepticism*” among developing Members “*every time we say we are doing TA and capacity building.*”⁷ For the FSA, she expressed the laudable ambition that the TACB mechanism should “*actually work.*”⁸ There are compelling reasons to share the DG’s ambition.

First, an effective TACB mechanism is essential as a matter of fairness. As Ambassador Wills aptly explained, the “*very purpose*” of TACB is to place all Members on a level playing field with respect to their capacity to implement the obligations, and take advantage of the rights in the agreement.⁹

As a first example, effective TACB would ensure that LDC and developing Members could “*trigger*” FSA obligations against *other* Members, particularly when fishing vessels from another Member exploit the resources of the LDC/developing Member (e.g., making illegal, unreported, and unregulated (“IUU”) or overfished stocks determinations). This potential “*offensive*” use of the FSA is an important part of the balance of rights and obligations. To give one example, several reputable studies report problems of (subsidized) foreign fishers engaged in IUU fishing off the coast of West Africa, with the African states lacking capacity to apply IUU/overfishing rules.¹⁰ The African states should have the capacity to make determinations that would prohibit subsidization of the foreign fishers by another state under Pillar 1. The DG has also said that a “*key objective*” of TACB would be to “*strengthen*” developing Members “*capacity to tackle IUU fishing*”.¹¹

As a second example, FSA implementation is not just a question of respecting subsidy prohibitions: all Members must also be able to take advantage of the proposed flexibilities. The flexibilities would confer a right on any WTO Member to grant (prohibited) subsidies, provided it has a fisheries management program that maintains stocks at sustainable levels. As noted, developing countries are concerned that the flexibilities would create a permanent imbalance in the agreement with an “*inversion of responsibilities*”. Developed countries, with capacity to implement fisheries management programs, could keep granting subsidies to maintain large fishing fleets

⁶ Concept Note on the Establishment of a WTO Trust Fund to Finance Technical Assistance and Capacity Building in Support of Implementation of new WTO Fisheries Subsidies Disciplines (TN/C/21, 19 July 2021) (“July Concept Note”).

⁷ June Explanatory Note, Annex I, para. 4.

⁸ June Explanatory Note, Annex I, para. 4.

⁹ May Explanatory Note, para. 110.

¹⁰ See, e.g., FAO, *Fight Against Illegal, Unreported and Unregulated Fishing in West Africa: A Regional Challenge* (2020, available [here](#)); E. C. Merem et al., *Analyzing the Tragedy of Illegal Fishing on the West African Coastal Region* (*International Journal of Food Science and Nutrition Engineering*, 2019, available [here](#)); J. F. Intchama et al., *Assessing Guinea Bissau’s Legal and Illegal Unreported and Unregulated Fisheries and the Surveillance Efforts to Tackle Them* (*Frontiers in Marine Science*, 2018, available [here](#)); A. Doumbouya et. al., *Assessing the Effectiveness of Monitoring Control and Surveillance of Illegal Fishing: The Case of West Africa* (*Frontiers in Marine Science*, 2017, available [here](#)).

¹¹ Among the “*key objectives*” of the DG’s proposed WTO funding mechanism would be to “[s]trengthen the countries’ capacities in monitoring, control and surveillance and hence their capacity to tackle IUU fishing.” July Concept Note, p. 2. See also FAO, *Checklist and Technical Guidelines to Combat Illegal, Unreported and Unregulated (IUU) Fishing* (2021, available [here](#)).

responsible for most fishing, whereas many developing countries lacking that capacity could not invest in developing smaller fleets that already catch less fish.

The DG is keenly aware of the importance of this issue, and the need for effective TACB to prevent this imbalance:

“the provision of the TA ... is needed to help developing and LDC Members adapt their domestic fisheries systems, so that these Members can both comply with the new rules and also take full advantage of the available flexibilities in the disciplines. I’ve seen first-hand from even along the West African coast the lack of capacity to be able to take advantage of these flexibilities.”¹²

The Concept Note similarly recognizes that for developing Members to implement the obligations and use the flexibilities, they will need *“robust sustainable fisheries management regimes,”* which will require *“significant fisheries management-related TACB for developing and LDC Members.”¹³* The delivery of this TACB would also benefit long-term fisheries sustainability because it would enable LDC and developing Members to adopt fisheries management programs that maintain stocks at sustainable levels.

Second, there is an inevitable link between effective TACB and the scale of ambition of the agreement. In short, LDC and developing Members are more likely to accept an ambitious agreement — which will, in turn, make a greater contribution to SDG 14.6 — if they believe it will be fair and balanced. As the DG has explained, TACB is needed to enable LDCs and developing countries *“both [to] comply with the new rules and also take full advantage of the available flexibilities in the disciplines.”¹⁴* Further, as noted, effective TACB not only assists developing Members in meeting their *own* obligations, it also strengthens their ability to trigger FSA obligations against *other* Members (e.g., by making IUU or overfished stocks determinations). By enabling such actions, TACB contributes to stronger implementation of the agreement across *all* WTO Members and, thereby, to the FSA’s overall sustainability objectives.

The Ozone treaties offer an instructive example of the value of offering effective TACB. These treaties are regarded as among the most successful multilateral environmental agreements: They have universal membership (all 197 UN members) and have contributed to the elimination of 98% of ozone-depleting substances.¹⁵ However, when the Montreal Protocol was agreed to in 1987,¹⁶ with a 10-year transition period for

¹² June Explanatory Note, Annex I, para. 3.

¹³ July Concept Note, p. 4 (*“To implement the [FSA prohibitions], including to use built-in flexibilities, Members will need to have in place robust sustainable fisheries management regimes. In particular, Members would need to have systems in place: to prevent or stop any inadvertent subsidization of entities engaged in IUU fishing; to identify overfished stocks on the basis of ‘best scientific evidence available,’ and to avoid subsidizing the fishing of such stocks; to ensure that stocks where fisheries subsidies are provided are maintained at a ‘biologically sustainable level’; and much more. Integrating sustainability considerations and criteria such as these into their internal processes for granting fisheries subsidies would require significant fisheries management-related TACB for developing and LDC Members”*).

¹⁴ June Explanatory Note, Annex I, para. 3.

¹⁵ <https://www.unep.org/news-and-stories/story/thirty-years-what-montreal-protocol-doing-protect-ozone>.

¹⁶ *Montreal Protocol on Substances that Deplete the Ozone Layer* (16 September 1987), made pursuant to the *Vienna Convention for the Protection of the Ozone Layer* (22 March 1985).

developing countries,¹⁷ just three developing countries were willing to join.¹⁸ That changed in 1990 with treaty amendments¹⁹ that guaranteed developing countries meaningful technical assistance in implementing the Protocol, including financial and technological resources.²⁰

II. An effective TACB mechanism can build on recent WTO practice

To achieve the DG's objective of providing TACB that "actually works," Members should work towards a TACB mechanism that meets three principles: it should be (1) tailored and specific to the needs of each TACB beneficiary country and to the terms of the agreement, (2) transparent in its format, and (3) accountable in its results.

In suggesting this approach, we have not reinvented the TACB wheel, but taken inspiration from the Membership's own approach in agreeing to the Trade Facilitation Agreement ("TFA"). The TFA is the only multilateral agreement successfully concluded since the end of the Uruguay Round, and it includes a TACB mechanism that goes beyond the TACB typically found in the Uruguay Round agreements. Although imperfect, it provides a helpful starting point.

Under the TFA, the Members agreed broadly on the following TACB mechanism:

- The TACB to be provided to each beneficiary country is planned with each country in light of the terms of the agreement and each country's specific needs, as determined by the country itself (**tailored and specific**);²¹
- A TACB workplan is submitted to the TFA Committee with regular reporting on the achievement (or not) of milestones; beneficiaries, donor Members, and other donors regularly report on the provision of TACB (**transparent**);²² and
- There is, in principle, a conditional relationship between the timing of implementation of TFA obligations and the successful delivery of the planned TACB. If a beneficiary Member indicates that the TACB workplan has not been completed on time or that it needs additional assistance, the implementation period may be extended, either by right or with justification (**accountable**).²³

¹⁷ Under Article 5 of the Montreal Protocol, a developing country meeting certain criteria was "entitled to delay for ten years its compliance".

¹⁸ Mexico, Nigeria, and Venezuela.

¹⁹ The London Amendment: The amendment to the Montreal Protocol, agreed by the Second Meeting of the Parties (London, 27-29 June 1990).

²⁰ See Elizabeth R. De Sombre, *The Experience of the Montreal Protocol: Particularly Remarkable, and Remarkably Particular*, UCLA Journal of Environmental Law and Policy, 19(1) (2000), pp. 69ff.

²¹ See Articles 16-19 and 21-22 of the TFA, which make clear that TACB is designed to enable implementation of Category B and Category C obligations (where Members self-designate into which category TFA provisions will be placed), with the timing of implementation tied to TACB needs. *See also* S. Switzer, "A contract theory approach to special and differential treatment and the WTO" (Journal of International Trade Law and Policy, 16(3), 2017), p. 14 (available [here](#)); A. Eliason, "The trade facilitation agreement: new hope for the World Trade Organization" (World Trade Review, 14(4), 2015), pp. 659-660.

²² See Article 22 of the TFA, as well as the various notification provisions in Articles 16-19 of the TFA.

²³ See Articles 16-19 of the TFA. Among others, for Categories B and C, Article 17.2 grants developing Members an 18-month extension by right, and LDC Members a 3-year extension; additional extensions

In designing an effective TACB mechanism for the FSA, Members should seek to build on this approach — it is the most innovative and most recent WTO model for TACB. It also offers the best prospect of an agreement that is fair to all Members and ambitious.

In so doing, Members have the opportunity to take on board lessons learned from the TFA. In particular, whilst building on the same core principles, we have tried to simplify the TACB mechanism under the TFA, which has been criticized as overly complicated and burdensome. We have suggested fewer TACB notifications and reports, which would lessen the burden on beneficiary Members and donors and improve clarity; fewer TACB-related deadlines, where the TFA has multiple deadlines that add complexity and may undermine predictability; and a simplified, more objective procedure for requesting an extension of the implementation period if TACB needs are not met.²⁴

III. Key elements of an effective TACB mechanism under the FSA

To stimulate debate, we outline below elements of an effective TACB mechanism under the FSA. We also offer details in the annex.

- **Tailored and specific:** TACB would be tailored to the terms of each of the three pillars (because each pillar requires different resources and capacity to implement) and to the self-determined TACB needs of each beneficiary Member (because each beneficiary faces its own challenges). There are likely to be extensive TACB needs to be addressed to enable successful implementation of the prohibitions and flexibilities. For example:
 - **Pillar 1 (IUU):** Some Members may need TACB support to enable them to implement and enforce domestic IUU regulations in a real world environment. This could include developing an appropriate domestic regime, training in enforcement, training domestic fishers, and ensuring an ability to take appropriate action with respect to foreign fishers operating in the Member's water. This capacity, which includes equipment to monitor fishing activities, is essential to enable all Members to trigger the prohibition in this pillar with respect to subsidization of fishing activities in their respective waters, including subsidization of those activities by other Members.²⁵
 - **Pillar 2 (Overfished stocks):** Some Members may need TACB support to enable them to make a determination of overfishing, which would trigger the

must be justified, including by reference to capacity needs (Article 17.3); in case of disagreement, the TFA Committee establishes an Expert Group (Article 18); a developing or LDC Member may also delay implementation of Category B provisions by requesting to shift them to Category C, including by reference to capacity needs (Article 19). *See also* R. McDougall, "A platform to accommodate levels of development in international trade rule-making", (ICTSD, 2018) (available [here](#)); P. Low, H. Mamdouh and E. Rogerson, "Balancing rights and obligations in the WTO — a shared responsibility" (Government offices of Sweden, 2018), p. 25 (available [here](#)).

²⁴ Under the TFA, within 18 months of notification of TACB arrangements, donor and developing Members report on progress in the provision of TACB (Art. 16.1(e) and 16.2(f)). In practice, this step has added to the burdens on beneficiary Members and donors, and has not been an important practical or legal feature of TFA implementation. To simplify the process, we suggest not including this obligation under the FSA. If appropriate, discussions on TACB progress could always happen in the FSA Committee.

²⁵ Some subsidizing Members may also need TACB support to assess the nature, gravity, and repetition of IUU fishing when setting the duration of the prohibition.

prohibition. Further, all Members must be able to take equal advantage of the in-built flexibilities in this pillar. To do so, some Members will need TACB to enable them to calculate a “biologically sustainable level” (“BSL”) for a stock (access to data, modelling techniques, etc.), and to demonstrate (through notifications or otherwise) that subsidies will promote sufficient stock rebuilding.

- Pillar 3 (Overcapacity and overfishing): Again, to take advantage of the in-built flexibilities, some Members will need TACB to enable them to calculate a stock BSL, and to design and implement conservation management measures that will enable them to demonstrate (through notifications or otherwise) that a stock is maintained at a BSL, despite subsidies.
- **Transparent**: For each beneficiary country, the country and donors would submit a TACB workplan to the FSA Committee²⁶ with written reports on the achievement (or not) of milestones.
- **Accountable**: The implementation of relevant obligations under the respective pillar(s) would be delayed if the TACB workplan is not completed, or if the TACB beneficiary needs additional assistance not originally foreseen. In short, if the Membership as a whole is unable to put a beneficiary Member in a position to implement the FSA fully on an ongoing basis, the Member’s obligation to implement the agreement should not be triggered.²⁷

In an annex, we have provided details on how these TACB principles could be implemented in the FSA. A key element is the linkage between (1) the timing of implementation of the FSA, and (2) the delivery of technical assistance to enable that implementation. These two elements must take place in parallel: an LDC/developing Member should only be subject to the new legal regime after it has received the technical assistance needed to enable it to apply the new regime (prohibitions and flexibilities).

²⁶ Article 9 of the Draft Text.

²⁷ Several persons who commented on a draft of this paper took the position that there is a lack of clarity in the current draft of the legal conditions that must be met to use the in-built flexibilities; they considered that this lack of clarity with respect to the required legal “benchmark” would make it difficult to design TACB to meet the “uncertain” legal conditions and to establish whether sufficient TACB has been given to enable a developing Member to meet those conditions. These comments suggest that the legal conditions in the in-built flexibilities would benefit from further clarification to ensure that all Members understand what steps must be taken to meet the conditions and continue granting otherwise-prohibited subsidies. Indeed, if beneficiary Members and donors, with the assistance of the Secretariat, could not design TACB to meet the legal conditions of the flexibilities, the current draft of the flexibilities may well go beyond the bounds of “constructive ambiguity”. At a minimum, it is clear that a Member must make a scientific determination of biologically sustainable stock levels, which is a complex task that requires scientific knowledge relating to interacting species in the ocean, sufficient data, and modelling. This task is an integral part of sustainable fisheries management and requires considerable human, financial, and technical capacity — all to the benefit of SDG 14.6. In any event, any lack of clarity in the legal conditions of the flexibilities should not come at the expense of developing Members, in particular the delivery to them of an effective and accountable TACB mechanism that enables them to implement all aspects of the FSA, including prohibitions and flexibilities. Otherwise, the flexibilities would amount to a double whammy for developing Members: first, many would lack the current capacity to use the in-built flexibilities; and, second, ambiguity in the draft would be a reason to deny them TACB to develop that capacity for future use of the flexibilities.

Annex: Technical assistance mechanism under the Fisheries Subsidies Agreement

This annex outlines a possible technical assistance and capacity building (“TACB”) mechanism under the Fisheries Subsidies Agreement (“FSA”), which builds on the TACB mechanism in the WTO Trade Facilitation Agreement (“TFA”) and takes on board lessons learned from the TFA. As with the TFA, the mechanism is designed to deliver technical assistance that is tailored and specific, transparent, and accountable.

To achieve these three objectives, the TACB mechanism links the delivery of technical assistance with the timing of implementation of FSA obligations (and flexibilities). Below, we begin by outlining the current timing of implementation of the FSA obligations (Section I), before describing the mechanism itself (Sections II, III).

I. Implementation dates for FSA obligations

In terms of the timing of implementation, the most recent draft of Pillars 1 (IUU) and 2 (Overfished stocks) replaces a **transitional period** for least-developing country (LDC) and other developing country Members with a **grace period** (or “peace clause”). However, under Pillar 3 (Overcapacity and overfishing), a transitional period is still offered.²⁸

There is an important legal distinction between the proposed grace periods (Pillars 1 and 2) and a true transitional period (Pillar 3). When a transitional period applies to an international obligation, a Member is not legally required to comply with the obligation during the period. However, under a grace period, a Member is required, as a matter of international law, to comply immediately with the obligation (*pacta sunt servanda*); the grace period means that a Member’s violation of the obligation cannot be challenged in dispute settlement. We consider that transition periods are appropriate under each pillar.²⁹

²⁸ Articles 3.8, 4.4 and 5.5(c) of the FSA; Chair’s Explanatory Note Accompanying TN/RL/276/Rev. 1 (TN/RL/W/276/Rev. 1/Add. 1, 30 June 2021), para. 32.

²⁹ The objective of an implementation period is to grant LDCs and other developing Members sufficient time to take the steps needed to apply the new FSA regime fully (obligations and flexibilities). The period, therefore, recognizes that beneficiary Members are not yet ready, in practice, to apply the new regime fully. In these circumstances, a transitional period is more appropriate than a grace period. With a transitional period, the legal regime applies to the Member only after the end of a period whose purpose is to enable the Member to take the steps needed to ensure full application of the regime. Thus, there is parallelism between the timing of the legal applicability of the regime and a beneficiary’s practical readiness to apply the regime. With a grace period, the legal regime applies immediately, although there is delayed enforcement. Such a period is appropriate when a Member is already practically ready to comply but there are still good reasons to excuse non-compliance. For example, under Article 13 of the *Agreement on Agriculture*, when any Member (developed or developing) complied fully with certain of its subsidy commitments under that *Agreement*, it could not be subject to dispute settlement in respect of an alleged violation of the parallel subsidy obligations under the *SCM Agreement*. Thus, compliance with the *Agreement on Agriculture* excused potential non-compliance with the *SCM Agreement*. The TACB mechanism developed in this note could be applied *mutatis mutandis* if a transition period, instead of a grace period, were provided under Pillars 1 and 2, as proposed under Pillar 3. To the extent that the Members afford a true transition period, they could add a grace period thereafter (as they did in the TFA; see Art. 20).

In the draft, the proposed grace periods (Pillars 1 and 2) and transitional period (Pillar 3) are as follows:

A. FSA obligations with a grace or transitional period:

- Pillars 1 and 2: Two-year (“2Y”) grace period precluding enforcement of the prohibitions against developing Members, including LDCs, in respect of all “low income, resource-poor and livelihood fishing” (“artisanal”) *within* 12 nautical miles (Art. 3.8 and 4.4).
- Pillar 3: Five-year (“5Y”) transition period before application of the prohibition³⁰ in Article 5.1 against non-LDC developing Members³¹ in respect of all fishing (artisanal and industrial) *within* their exclusive economic zone (“EEZ”) or within the area of competence of a Regional Fisheries Management Organization or Arrangement (“RFMO/A”). Beneficiary Members must formally invoke this transition period and they may also seek an extension of the 5Y period (Art. 5.5(c),(d)).

B. FSA obligations without a grace or transitional period:

- Pillars 1 and 2: LDCs and developing Members are immediately subject to the prohibitions, including enforcement by dispute settlement with respect to industrial fishing *within* 12 nautical miles and all (artisanal and industrial) fishing *beyond* 12 nautical miles (Art. 3.8 and 4.4).³²
- Pillar 3: (i) non-LDC developing Members are immediately subject to the prohibition in Article 5.1, including enforcement by dispute settlement with respect to all fishing (artisanal and industrial) *beyond* their EEZ or beyond the area of competence of an RFMO/A (Art. 5.5(c)); and (ii) LDCs and developing Members are immediately subject to the prohibitions in Articles 5.2, 5.3, and 5.4, including enforcement by dispute settlement with respect to all fishing (artisanal and industrial).
- Notification requirements (Art. 8).

With these provisions in mind, we turn to a proposed TACB mechanism, which links the timing of commitments with the delivery of technical assistance. The mechanism aims to ensure technical assistance that is tailored and specific, transparent, and accountable. The table below is based on the most recent draft, and, therefore, refers to a grace period (for Pillars 1 and 2) instead of to a transition period.

³⁰ We rely on alternative two (“ALT2”) under Pillar 3, because alternative one (“ALT1”) has “shown wide differences” and does not provide any transition period. June Explanatory Note, para. 107.

³¹ LDCs enjoy a permanent exemption under Pillar 3 for subsidies that support any type of fishing. Other developing countries enjoy a permanent exemption for subsidies that support artisanal fishing within 12 nautical miles.

³² Members should only exercise “due restraint” when considering action against LDCs (Art. 6.2).

II. Procedural aspects of TACB mechanism for obligations with a grace or transition period

Proposed TACB mechanism for the fisheries subsidies agreement		Comparison with TFA
When? ³³	What?	
Step A Day 1	On entry into force, each developing Member to notify the Committee of TACB needs , possibly in consultation with the FAO and WTO Secretariat. (If the implementation period under Pillars 1 and 2 were longer for LDCs than other developing Members, LDCs could be given more time to notify.)	• Similar procedure under the TFA, albeit with more time for LDCs: notify TACB needs at time of entry into force agreement (Art. 16.1(c)) or after two years for LDCs (Art. 16.2(d)).
Step B End of year 1	Each developing Member and donors to notify the Committee of TACB arrangements . (If the implementation period under Pillars 1 and 2 were longer for LDCs than other developing Members, LDCs could be given more time to notify.)	• Similar procedure under the TFA, albeit with more time for LDCs: notify TACB arrangements at the end of year one (Art. 16.1(d)) or after four years for LDCs (Art. 16.2(e)).
Step C Before the end of the implementation period (i.e., Y2 for Pillars 1 and 2; Y5 for Pillar 3)	Opportunity to request extension of grace (Pillars 1, 2) and transition period (Pillar 3), if TACB needs not met: 1. <u>First request</u> : Automatic extension (e.g., half of the original duration) <ul style="list-style-type: none"> • For Pillars 1, 2: 1 year • For Pillar 3: 2.5 years³⁴ 2. <u>Subsequent requests</u> : Upon approval by the Committee, with sympathetic consideration to the request, taking into account whether TACB needs are met. If the Committee rejects a request, an Expert Group would be established to make a recommendation within 120 days. The Expert Group would solicit information from the developing Member and donors, with minimum administrative burdens, to consider whether	• Similar procedure under the TFA: 1. First request: automatic extension of 18 months (3 years for LDCs) (Art. 17.2). 2. Subsequent extensions, based on a request to the Committee (Art. 17.3, 17.4 and 18), with the Committee giving “sympathetic consideration” to the request, taking account of circumstances such as “difficulties and delays in obtaining assistance and support” (Art. 17.4). If the Committee rejects the request, an Expert Group may make a recommendation to the Committee (Art. 18). For LDCs, a peace clause applies during the procedure (Art. 18.5). • To reduce administrative complexity and the burden on developing Members, we propose that the Expert Group is

³³ Indicative dates for illustrative purpose only.

³⁴ For Pillar 3, the right to request an extension of the transition period is an alternative to the extension procedure foreseen under Art. 5.5(d) of ALT2.

Proposed TACB mechanism for the fisheries subsidies agreement		Comparison with TFA
When? ³³	What?	
	TACB needs are met. A peace clause would apply during the procedure.	established automatically if the Committee makes a negative decision, and would solicit information from the developing Member and donors with minimum administrative burdens.
Step D Any time after implementation date	If a developing Member loses the ability to implement its obligations under any of the pillars, it could trigger a Step C-type procedure for temporary suspension of its obligation(s). Request to Committee: If the Committee rejects the request, an Expert Group would make a recommendation (with a peace clause during the procedure). If the Committee decision is favorable, a peace clause would apply for the period covered by the decision.	<ul style="list-style-type: none"> • Similar procedure foreseen under the TFA for LDCs (Art. 18.6). As a non-LDC developing Member may also lose its ability to implement and enforce the fisheries subsidies obligations (e.g., to operate a “robust sustainable fisheries management regime [...]”³⁵), we propose to make this option available also to non-LDC developing Members. • We propose a simplified procedure in which the independent Expert Group is automatically involved (unlike under the TFA), and to clarify the type of decision to be taken by the Committee (i.e., to grant a grace period or not for the period covered by the decision).

³⁵ Concept Note by the Chairperson (TN/C/21, 19 July 2021), p. 3.

III. TACB mechanism for obligations without a grace or transition period

As explained in Section I, certain FSA obligations would apply to developing Members on the entry into force of the agreement without delayed enforcement through either a grace or transitional period. However, developing Members, including LDCs, may need TACB to effectively implement and enforce these obligations and their related flexibilities.³⁶

We identify two ways to provide developing Members with an implementation period to allow time for the provision of the TACB needed to implement the FSA legal regime fully, including the flexibilities. In so doing, we apply *mutatis mutandis* certain steps identified in the table above (Section II). The two options are:

1. As with other FSA obligations, provide for an automatic **implementation period** (currently a grace period under Pillars 1 and 2, and a transitional period under Pillar 3) and apply *mutatis mutandis* the TACB mechanism set out in the table above (steps A-D); or,
2. Give developing Members a **right to request an implementation period** (currently a grace period under Pillars 1 and 2, and a transitional period under Pillar 3) within six months of the agreement entering into force (based on step C.1). A developing Member could also submit subsequent requests if TACB needs are not met by the end of the implementation period (based on step C.2), or request a suspension period if it subsequently loses the ability to implement certain obligations (step D).

³⁶ TACB may be needed, for instance, to implement and enforce IUU legislation and to ensure that fishers meet the IUU requirements under Pillar 1; to put in place an efficient fisheries management regime to make overfishing determinations under Pillar 2 and to rely on the built-in flexibilities under Pillars 2 and 3; to review subsidy programs to ensure consistency with the prohibitions under Pillars 1, 2, and 3; and to meet the notification requirements under Art. 8. *See also* Concept Note by the Chairperson (TN/C/21, July 19, 2021).