

# WTO'S ROLE IN ASSUAGING MARINE EXPLOITATION: THE DRAFT AGREEMENT ON FISHERIES SUBSIDIES

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## ABSTRACT

*Since the start of the Doha round in 2001, talks on fisheries subsidies have been ongoing at the WTO. Globally, capture fishing is on the rise, with overexploitation of marine fisheries resources causing environmental issues. Fisheries exploitation is fueled by a variety of causes, including the commercial element of the industry as well as the fact that it provides a source of income for millions of fish workers across the world. Subsidies to the fishing industry and fishermen have a vital role in supporting the sector and its workers. However, the form of fisheries subsidies, as well as the proportion of fish workers or industries that benefit from them, varies substantially between major fish-producing countries. Fisheries subsidies may be supporting large-scale commercial fisheries in numerous rich economies as well as some developing nations. Given the various interests of major fish producing nations, regulating fisheries subsidies is complicated. In this article, the author has most importantly attempted to discuss the recent draft agreement on fisheries subsidies and their effects worldwide. The paper has been divided into six sections. The first section talks about the introduction, the second explores the classification of fisheries subsidies. It is followed by the third section which further discusses a global talk on fisheries subsidies. The fourth section talks about the recent draft WTO agreement on fisheries subsidies along with its key features. The fifth section covers the future challenges in fisheries and aquaculture. Sixth section entitled 'A Sea Change?' covers the summary of the paper and recommendations too.*

**Keywords:** Fisheries subsidies, WTO, marine exploitation, draft agreement, worldwide, negotiations

## I. INTRODUCTION

A fisheries subsidy<sup>2</sup> is a government measure that gives customers or fish extractors an advantage to supplement their income or reduce their costs. Target 14.6 of Sustainable Development Goal 14 focuses on prohibiting subsidies that contribute to overcapacity and overfishing, as well as unreported and uncontrolled fishing, and refraining from additional such subsidies.

Since the start of the Doha Round in 2001, the WTO has been negotiating on fisheries subsidies. At the Nairobi Ministerial in December 2015, the difference amongst WTO Members on whether or not to

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<sup>2</sup> Report of the Expert Consultation on Identifying, Assessing and Reporting on Subsidies in the Fishing Industry (FAO 2003) <<https://www.fao.org/3/y4446e/y4446e00.htm#Contents>> accessed 1 October 2021

continue the Doha Round on a variety of topics was clear. However, everyone agreed that after Nairobi, they would tackle the Doha concerns. Negotiations over fisheries subsidies, which are motivated by environmental concerns, will continue to occupy WTO Members' attention in the wake of the TPP Agreement and the UN Sustainable Development Goals.<sup>3</sup> Food production, the economic side of fish trading, and the livelihood of millions of fish workers throughout the world, all drive the exploitation of fisheries resources. Subsidies to the fishing sector and fishermen play a fundamental role in providing support. However, the kind of fisheries subsidies and who receives them vary profoundly across major fish-producing countries. Given the different interests of major fishery producing nations, policing fisheries subsidies is difficult.

For a large section of the world's population, fish is a significant source of sustenance. It is an essential part of many people's diets around the world. Global fisheries output has increased as a result of the growing global population and rising affluence. As part of its mandate, the United Nations' Food and Agriculture Organization ("FAO") analyses and publishes statistics on fisheries and aquaculture production, trade, and utilization data every year. Since the late 1980s, the long-term trend in total world capture fisheries has been relatively constant, with harvests ranging between 86 million and 93 million tonnes per year (Figure 4).<sup>4</sup> However, total global capture fisheries production reached 96.4 million tonnes in 2018, the highest amount ever recorded, with inflation of 5.4 per cent from the previous three years' average (Table 1).<sup>5</sup> The graph below has been extracted from the State of World Fisheries and Aquaculture Report, 2020.

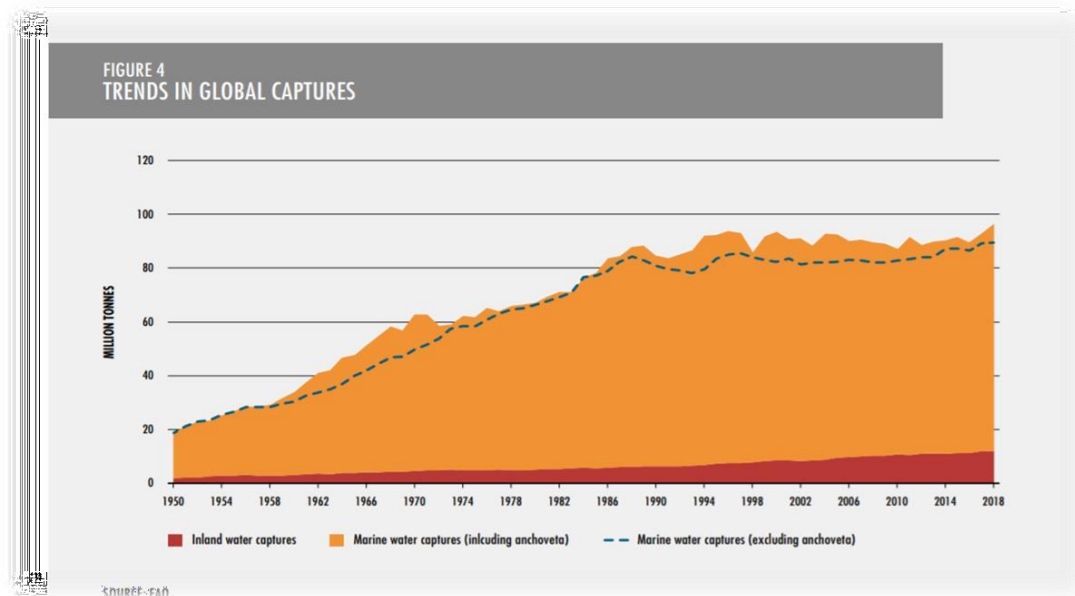
With a continued rise in population and wealth, it is projected that global fish supplies would be exploited to suit a variety of purposes, with aquaculture likely to meet the growing need for fish. The major advantage of the exploitation of fish populations is that it provides vital employment and economic gain. The fishing industry is a major source of employment, supporting the livelihoods of 10-12 per cent of the world's population. According to the FAO, employment in this industry has expanded at a faster rate than the global population. The sector is also crucial for small-scale fish worker employment. According to the International Collective in Support of Fishworkers, a non-governmental organization based in the United Kingdom:

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<sup>3</sup> *Sustainable Development Goals* (UNDP) <file:///C:/Users/Aditi\_Dehal/Downloads/SDGs\_Booklet\_Web\_En.pdf> accessed 2 February 2022

<sup>4</sup> *State of World Fisheries and Aquaculture 2020: Sustainability in Action* (FAO 2020) <www.fao.org/3/ca9229en/ca9229en.pdf> accessed 3 October 2021

<sup>5</sup> Ibid



*Over 90% of the world’s fishers and fish workers are employed in small-scale fisheries, which catch, process, trade, and market fish. Women make up about half of this group. Small-scale fishing accounts for around half of all global fish catches. When it comes to captures intended for direct human consumption, this sub-sector accounts for two-thirds of the total. Small-scale fishing and related activities are often the lifeblood of local economies in coastal, lakeshore, riverine, and other riparian communities, acting as a generator of jobs and revenue in other sectors via forwarding and backward connections. Fishing activities are often part-time and seasonal, but they provide an essential supplemental source of food and revenue in many communities.<sup>6</sup>*

Another major component of the fisheries sector is that it is a widely traded food item in the international market, with developing nations accounting for more than half of all fish exports by value. However, as with any other environmental resource, rising demand for fish has put a strain on existing world fish stocks; exploitation of fish stocks has resulted in over-exploitation of particular species’ stocks.

Due to the existence of damaging fish practices, illegal, unreported, and unregulated fishing (“IUU fishing”), and excessive subsidies to the fisheries sector in many countries, fisheries exploitation has worsened. The issue of excessive subsidisation in the fisheries sector is the most troublesome of these three concerns, as it encourages unsustainable fishing practices. In 2010, the United Nations Committee on World Food Security formed a High-Level Panel of Experts on Food Security and Nutrition to give evidence-based and policy-oriented assessments to the Committee. In 2014, it published a study titled *Sustainable Fisheries and Aquaculture for Food Security and Nutrition*, in which it stated that “many fishing resources are severely depleted,

<sup>6</sup> ‘Small-scale fisheries: Their contribution to food security, poverty alleviation and sustainability’ (*International Collective in Support of Fishworkers*) <<https://igssf.icsf.net/en/page/1050-Small-scale%20fisheries.html>> accessed 4 October 2021

while many nations continue to pay subsidies, particularly fuel subsidies.”<sup>7</sup> The situation is aggravated by the fact that most of the nations do not disclose the exact amounts of these subsidies.

It is widely acknowledged that fisheries access rights agreements when combined with excessive subsidies result in the shift of fishing capacity from small businesses to major corporations and fishing fleets. It might contribute to overfishing and the decline of fish stocks critical to residents’ livelihoods. Many investigations have looked into the relationship between exorbitant fisheries subsidies and fish stock availability. The World Trade Organization’s Secretariat produced a report on Trade and Environment in 1999 that underlined the link between overfishing and fisheries subsidies. “A reduction in trade-distorting fishing subsidies, which currently amounts to over \$54 billion annually, would reduce overcapitalization in the industry and minimize overfishing,” according to the research.<sup>8</sup>

## II. CLASSIFICATION OF FISHERIES SUBSIDIES

Many WTO subsidies for the fisheries industry are broad, extending to other sectors such as transportation or fuel subsidies. The WTO’s Subsidies and Countervailing Agreement (“SCM Agreement”) stipulates a specificity requirement that makes it difficult to challenge the consistency of such subsidies under the SCM Agreement’s auspices; the SCM Agreement in its current form is insufficient to address subsidies in the fisheries sector. This is exactly why WTO members are proposing to carve out different procedures for dealing with fisheries subsidies within the SCM Agreement.

### (i) *Classification under the WTO’S Negotiating Group on Rules*

The Chair of the NGR, in its Draft Consolidated Chair’s Texts of the Anti-Dumping and SCM Agreements, published on November 30, 2007, took a comprehensive approach in classifying fisheries subsidies. Based on the Chair’s proposed text, the following classification of fisheries subsidies can be made:

1. CAPACITY-RELATED – acquisition, construction, repair, renewal, restoration, modernisation, or any other alteration of fishing or service vessels, including subsidies to boat or shipbuilding facilities for these reasons.
2. OPERATING COSTS – including licence fees or similar charges, fuel, ice, bait, personnel, bait, gear, insurance, social charges, and at-sea support); or 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; or subsidies to cover operating losses of such vessels or activities.

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<sup>7</sup> HLPE, ‘Sustainable fisheries and aquaculture for food security and nutrition. A report by the High-Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security’ (FAO 2014) <[www.fao.org/3/i3844e/i3844e.pdf](http://www.fao.org/3/i3844e/i3844e.pdf)> accessed 5 October 2021

<sup>8</sup> Håkan Nordström and Scott Vaughan, *Trade and the Environment* (World Trade Organization 1999) vol 4 <[www.wto.org/english/res\\_e/booksp\\_e/special\\_study\\_4\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/special_study_4_e.pdf)> accessed 6 October 2021

3. PORT-RELATED – port infrastructure or other physical port facilities used solely or primarily for marine wild capture fishing activities (for example, fish landing facilities, fish storage facilities, and in- or near-port fish processing facilities).
4. DIRECT PAYMENTS – Income assistance; Price assistance
5. FISHING ACCESS RIGHTS – originating from a government’s subsequent transfer of access rights acquired from another government in exchange for the right to fish within that other government’s purview.
6. DESTRUCTIVE PRACTISES – in respect to IUU fishing vessels; fishing vessels or activities engaged in overfishing of depleted stock.

Many types of special subsidies were proposed to be brought inside the purview of rule-making, as the Chair’s comment demonstrates.

The proposed text took a comprehensive bottom-up approach, aiming to include the most common types of fishery subsidies, which were inextricably linked to fishing capacity and operation costs, in the scope of the proposed restriction.

#### *(ii) FAO classification*

Fishery subsidies are divided into four categories by the FAO. Direct financial transfers, services, and indirect financial transfers, as well as rules and absence of action, are all examples.

1. DIRECT FINANCIAL TRANSFERS – “All direct payments by the government to the fisheries industry are included in this category.” These subsidies are likely to have a direct impact on the industry’s earnings, and they can also be detrimental (i.e. payments from the industry to the government). Their cost to the government is normally included in the public budget, and their direct benefit to the industry is reflected in the recipient enterprises’ cash flow.<sup>9</sup>
2. SERVICES AND INDIRECT FINANCIAL TRANSFERS – “Any additional active and explicit government involvement that does not include a direct financial transfer as defined under direct financial transfers falls under this category.” Subsidies in this category include public-sector services and indirect financial transfers, such as tax rebates. Their cost may or may not be defined in the public budget, and they are worth to the recipient industry are rarely recorded directly in the recipient

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<sup>9</sup> Lena Westlund, *Guide for Identifying, Assessing and Reporting on Subsidies in the Fisheries Sector* (2004) FAO Fisheries Technical Paper No. 438, 15 <[www.fao.org/3/y5424e/y5424e07.htm](http://www.fao.org/3/y5424e/y5424e07.htm)> accessed 5 October 2021

industry's accounting.<sup>10</sup>

3. REGULATIONS – “Governmental regulatory interventions fall under the third type.” The government’s cost of these subsidies, which is usually an administrative cost, maybe hidden among other public expenditures for administration and regulations. Unless it is a profit-decreasing subsidy entailing expense for the business, the value to the industry does not generally occur in the accounting of the industry.<sup>11</sup>

The FAO categorizes countries based on the way through which subsidies or assistance are supplied. As a result, there is considerable overlap in the types of assistance given. A government regulation, for example, could provide both damaging and useful subsidies to the sector. Furthermore, the categorisation is ambiguous in its terms. For example, if all other areas are strictly regulated omitting the fishing sector, “absence of intervention” could be achieved through a government rule. This would be considered indirect conferral of a benefit and would fall under both the “Regulations” and “Lack of Intervention” sections.

### ***(iii) UNEP Classification***

Fisheries subsidies can be grouped into the following categories, according to the UNEP<sup>12</sup>:

1. Infrastructure for fishing
2. Management services and research
3. Subsidies for access to foreign waters
4. Subsidies for vessel decommissioning and licence retirement
5. Capital cost subsidies
6. Variable-cost subsidies
7. Income assistance and unemployment insurance
8. Subsidies for price support

This classification is highly comprehensive, with no overlap between the eight groups. However, this classification has one flaw: it “excludes subsidies that emerge through government inaction, such as the non-recovery of fishing resource rents, which some have claimed might be considered an economic subsidy

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<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Anja von Moltke, *Fisheries Subsidies, Sustainable Development and the WTO* (UNEP 2011) 20

to the business.”<sup>13</sup>

**(iv) Classification by WWF**

The WWF published a position paper on fisheries subsidies in 2004.<sup>14</sup> The WWF has developed a four-part normative taxonomy of fisheries subsidies in this position paper:

1. MOST DETRIMENTAL – fishing subsidies that are so closely linked to negative outcomes that they should be prohibited in general.
2. LIKELY TO BE HARMFUL – those that are frequently but not always destructive, thus they should be permitted but subject to very tight conditions.
3. POTENTIALLY DETRIMENTAL – those that may be harmful on rare occasions, but should be tolerated and subjected to fewer restrictions.
4. BENEFICIAL – those that are so closely linked to favourable outcomes that they should be allowed in under WTO law.

This can be termed as the simplest way of classification of fisheries subsidies.

All of the classification approaches provide different perspectives on studying fisheries subsidies and aid in understanding their nature. However, as the analysis shows, some classifications are more beneficial in the construction of a framework to govern subsidies than others.

There is a decent possibility that WTO negotiations on fisheries subsidies would resume with reinvigorated vigour. Members of the WTO will be assigned the task of identifying the types of subsidies that may be prohibited; whether there will be some general exceptions; what conditions will be associated with these general exceptions; and what will be the scope of S&DT for developing countries and LDCs in these negotiations. These are challenging and complex issues that have hampered previous agreements, and negotiators will have a challenging task in resolving them.

### **III. THE DRAFT AGREEMENT ON FISHERIES SUBSIDIES, 2021**

The World Trade Organization (WTO) has taken a step closer to an agreement on abolishing harmful

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<sup>13</sup> Alice V. Tipping, *A ‘Clean Sheet’ Approach to Fisheries Subsidies Disciplines* (International Centre for Trade and Sustainable Development and World Economic Forum 2015) <[www.e15initiative.org/wp-content/uploads/2015/04/E15\\_Subsidies\\_Tipping\\_final.pdf](http://www.e15initiative.org/wp-content/uploads/2015/04/E15_Subsidies_Tipping_final.pdf)> accessed 6 October 2021

<sup>14</sup> David K. Schorr, ‘Healthy Fisheries, Sustainable Trade: Crafting New Rules on Fishing Subsidies in the World Trade Organization’ (World Wildlife Fund 2004) <[https://www.wto.org/english/forums\\_e/ngo\\_e/posp43\\_wwf\\_e.pdf](https://www.wto.org/english/forums_e/ngo_e/posp43_wwf_e.pdf)> accessed 2 October 2021

fishing subsidies after more than two decades of talks. The agreement will establish new standards for the worldwide fishing sector and restrict government funding that leads to unsustainable fishing and global fish stock depletion.

WTO members pledged to end the negotiations before the Twelfth Ministerial Conference (MC12) in late November and to empower their representatives in Geneva to do so, in a meeting with government ministers and leaders of national delegations. It would certainly be a good move in my opinion as the existing negotiation text can be used as the foundation for a final agreement.

Subsidies for illicit, unreported, and unregulated (IUU) fishing were to be phased down, and certain subsidies that contribute to overcapacity and overfishing were to be prohibited. Since 2001, talks have been ongoing, although progress has been hampered by disputes between administrations. The timeframe for reaching an agreement was set for 2020, but talks were postponed owing to Covid-19 limits and the US presidential election. After that, a deadline was set for July, which was again missed. Now, Okonjo-Iweala, who took over as WTO president in March, is seeking to negotiate a settlement by the end of 2021 and there will be a major test for the organization's integrity, with members deadlocked on other issues.

Ministers examined an eight-page draft agreement at the conference, which includes several subsidies bans as well as some requirements for poorer nations' exemptions, all of which have still to be finalized. While some of the delegations, such as the EU, was enthusiastic, several ministers expressed concerns about the draft's content. In response to one element of the text, Indian trade minister Piyush Goyal remarked during the meeting, "Clearly, it will lead to capacity limits for developing countries, while advanced nations will continue to offer subsidies." The proposal was criticised as "regressive and unbalanced" by Pakistan, while the African coalition said, "major gaps" remained.

In essence, the agreement proposes three types of illegal subsidies: those that assist IUU fishing, have an impact on overfished stocks, or lead to overcapacity and overfishing. While this may appear to be a straightforward task, the political, economic, and cultural intricacies are significant obstacles.

One of the key difficulties has been the need for so-called special and differential treatment for emerging countries and the poorest nations. While this is largely acknowledged for the poorest countries, it has been difficult to accept claims from self-identified underdeveloped countries to be excluded from subsidy limitations.

The importance of concluding a deal cannot be understated. According to author's observation, it would provide both an opportunity to reach a global agreement at last to curb harmful fisheries subsidies, and an opportunity for the WTO to build trust in multilateralism, not least since the negotiations on new disciplines on fisheries subsidies are the only multilateral trade negotiations currently ongoing.



*(i) The Scale of the Problem*

The global fishing sector receives roughly US\$35 billion in subsidies each year (228 billionyuan). According to the European Parliament’s Committee on Fisheries, \$20 billion is supplied in forms that strengthen the capability of large fishing fleets, such as fuel subsidies and tax exemption programmes.<sup>15</sup> According to a survey by Oceana, the world’s top ten donors of damaging fisheries subsidies distributed \$15.4 billion in total in 2018. The EU as a whole contributed \$2 billion, putting it in third place behind China and Japan.<sup>16</sup>

Eliminating any detrimental subsidies could contribute to the recovery of fish populations. It would result in a 12.5 per cent rise in world fish biomass by 2050, resulting in approximately 35 million metric tonnes of fish - over three times Africa’s entire fish consumption in a single year.<sup>17</sup> As the world’s fish populations have continued to decline below sustainable levels, the need for progress on an agreement has become even more urgent in recent years. According to the latest numbers from the UN Food and Agriculture Organization, 60 per cent of evaluated stocks are completely exploited, while 30 percent are over exploited. As the world’s fish populations have continued to decline below sustainable levels, the need for progress on an agreement has become even more urgent in recent years. According to the latest numbers from the UN Food and Agriculture Organization, 60 per cent of evaluated stocks are completely exploited, while 30 percent are overexploited. The elimination of damaging subsidies, which is part of the UN Sustainable Development Goals (SDGs), would be considered as a significant step forward in ocean sustainability ahead of the UN biodiversity conference in Kunming in October and the COP26 climate summit in Glasgow in November.

“This is the year in which the contract must be delivered. The head of the World Trade Organization (WTO) has expressed optimism that a deal will be achieved this year. There is a ray of hope at the end of this 20-year journey. “Being in the tunnel shadows at a time when ocean life is decreasing is a sad prospect,” Peter Thomson, UN special envoy for the ocean, said in a webinar.

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<sup>15</sup> U. Rashid Sumaila and others, *Global Fisheries Subsidies* (Directorate General to Internal Policies 2013) <[www.europarl.europa.eu/RegData/etudes/note/join/2013/513978/IPOL-PECH\\_NT\(2013\)513978\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/513978/IPOL-PECH_NT(2013)513978_EN.pdf)> accessed 30 September 2021

<sup>16</sup> ‘New Oceana-Supported Research Maps Wealthy Nations’ Harmful Fisheries Subsidies Supporting their Fleets Abroad, Including in the Waters of Least Developed Countries’ (*Oceana 30 June 2021*) <[www.globenewswire.com/en/news-release/2021/06/30/2255500/0/en/New-Oceana-Supported-Research-Maps-Wealthy-Nations-Harmful-Fisheries-Subsidies-Supporting-their-Fleets-Abroad-Including-in-the-Waters-of-Least-Developed-Countries.html](http://www.globenewswire.com/en/news-release/2021/06/30/2255500/0/en/New-Oceana-Supported-Research-Maps-Wealthy-Nations-Harmful-Fisheries-Subsidies-Supporting-their-Fleets-Abroad-Including-in-the-Waters-of-Least-Developed-Countries.html)> accessed 1 October 2021

<sup>17</sup> Ernesto Fernandez Monge & Reyna Gilbert, ‘Ending Harmful Subsidies Could Increase Amount of Fish in the Ocean, Research Shows’ (*PEW Charitable Trust 28 October 2021*) <[www.pewtrusts.org/en/research-and-analysis/articles/2021/06/07/ending-harmful-subsidies-could-increase-amount-of-fish-in-the-ocean-research-shows](http://www.pewtrusts.org/en/research-and-analysis/articles/2021/06/07/ending-harmful-subsidies-could-increase-amount-of-fish-in-the-ocean-research-shows)> accessed 2 October 2021

*(ii) Key Features of the Draft<sup>18</sup>*

1. Existing WTO rules regulate governments that provide financial assistance in three situations: when it is linked to export performance (export subsidies) when it is linked to the use of domestic rather than imported products (local content subsidies — collectively known as “prohibited” subsidies), and when it causes injury or serious prejudice to another Member’s industries (or “nullifies” subsidies). Assistance must provide an ‘advantage’ in all three circumstances, and it must be given to a specific group of people. The agreement veers away from this starting point by disciplining subsidies not (only) for distorting product competitiveness, but also for incentivizing ecologically damaging activities. In essence, the draft text proposes an additional layer of obligation for certain subsidies based on recipients’ behaviour. As a result, it both adds to and expands on current rules. The agreement includes subsidies that match the existing definition of a subsidy in Art 1 SCM Agreement — that is, a financial contribution, income, or price support supplied by a governmental entity that confers a benefit on a defined type of recipient (draft Art 1.1). However, it has the potential to broaden existing laws by regulating fuel subsidies that would otherwise go unregulated since they do not benefit specific recipients (draft Art 1.2).
2. The proposal essentially creates four new categories of prohibited subsidies: (1) subsidies that support vessels that are “engaged in illegal, unreported, and unregulated fishing” (draft Art 3.1); (2) subsidies that support “fishing or fishing related activities regarding an overfished stock” (draft Art 4.1); (3) subsidies that “contribute to overcapacity or overfishing” (draft Art 5.1); and (4) subsidies that support fishing in areas that are neither protected nor regulated by a regional fisheries management organisation (RFMO) (draft Art 5.3).
3. The draft piggybacks on Members’ reporting obligations under Art 25 SCM Agreement, requiring them to provide information on the fishing activities, its subsidies and species-specific catch data in subsidised fisheries (draft Art 8.1(a)), as well as the conservation and management status of stocks within subsidised fisheries, existing conservation and management reserves for appropriate stocks, the names and registration numbers of subsidized vessels, as well as the fleet storage in subsidized fisheries (draft Art.8.1(b)). Members must also furnish the (new) Fisheries Subsidies Committee with a list of vessels they believe are involved in IUU fishing each year, as well as details of any access arrangements they have with other countries (draft Art 8.2). Members must communicate any additional required information to other Members in a timely and comprehensive manner (draft Art 8.3)
4. Perhaps most importantly, the plan is compatible with existing dispute resolution and remedy procedures (draft Art 10). WTO members frequently utilise unilateral countervailing duties (retaliatory

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<sup>18</sup> Callum Musto, ‘The draft WTO agreement on fisheries subsidies: Are we closing the net?’ (*EJIL: Talk!* 1 June 2021) <[www.ejiltalk.org/the-draft-wto-agreement-on-fisheries-subsidies-are-we-closing-the-net/](http://www.ejiltalk.org/the-draft-wto-agreement-on-fisheries-subsidies-are-we-closing-the-net/)> accessed 2 October 2021.

tariffs) to respond to both ‘prohibited’ and ‘actionable’ subsidies.

5. In a nutshell, this means that Members can challenge subsidies in dispute settlement proceedings and/or impose countervailing duties and according to the author, this would effectively turn unilateral trade remedies into an environmental tool — though one that can only legitimately negate (rather than prevent) incentives for exploitative practices.

### ***(iii) Notable Points***

1. Competence and responsibility for living resources and environmental protection are shared on a functional and geographic basis under the law of the sea. As a result, fisheries management and conservation necessitate a complex matrix of overlapping and conflicting jurisdictional and institutional competencies shared across multiple States and RFMOs. How to accurately identify unsustainable activities — and hence illegal subsidies — is a key issue in the negotiations. When deciding if IUU activities have occurred, a stock is overfished, or fishing happens outside of national authority or RFMO competence, whose recommendations should be authoritative?
2. Importantly, the proposed text explicitly relates its operation to the FAO’s 2001 Plan of Action (IPOA-IUU) definition of IUU fishing (paras. 3.1–3.3). If a subsidy supports a wide range of activities, it will be forbidden under draft Art. 3. Fishing without or in excess of a licence in a State’s EEZ or an RFMO management area, exceeding catch limits for targeted or by-catch species, employing prohibited gear or methods, fishing during closures, or inadequately reporting effort or capture are all examples of IUU fishing, according to the IPOA-IUU.
3. The proposal distributes power for IUU operations among coastal states, flag states, and regional fisheries management organisations (RFMOs) (draft Art. 3.2). Subsidies shall be prohibited if they benefit a vessel or operator that is listed by its flag State or identified as engaging in IUU operations within its maritime zones or by an RFMO within its geographical and species competencies (draft Arts. 3.2–3.3). The proposed requirements aim to guarantee that investigations are evidence-based and transparent (draft Art. 3.3).
4. Similarly, the document gives the coastal State in whose seas fishing takes place or the RFMO the competence over the activities, authority to determine when a stock is ‘overfished,’ with the proviso that assessments be ‘based on best scientific evidence available’ (draft Art 4.2). Importantly, port and market state members do not have explicit determination authority; consequently, their involvement in identifying unsustainable practices appear to be confined to reporting flag and coastal States, as well as RFMOs, of vessels’ or operators’ actions.

5. The necessity to provide special and differentiated treatment (SDT) for developing country Members — notably coastal communities in the least developed country (LDC) members who rely on artisanal and subsistence fishing — has become a more serious sticking point in discussions. SDT is a fundamental notion that may be found in all WTO Agreements. The challenge is to provide enough flexibility to accommodate true reliance on coastal fisheries without jeopardising the agreement’s goals, particularly the elimination of subsidies for unsustainable commercial fishing.
6. Two different paths are outlined in the proposal. The first would exempt LDCs and developing nation members from the restriction on overcapacity subsidies (draft Art 5.5(a) ALT 1), as well as all fishing activities in their territorial sea (draft Art 5.5(b) ALT 1). If conditions relating to a member’s economic development and share of global marine capture surpass specific limits, these exclusions would be revoked (proposed Art 5.5(c) ALT 1). The second strategy calls on developing country members to gradually phase down overcapacity subsidies, particularly those for artisanal and subsistence fishing.
7. While LDC Members would remain exempt from Art 5.1, developing country members would be allowed to keep over-capacity subsidies for seven years for ‘low income, resource-poor or livelihood fishing or fishing related activities’ within the territorial sea, and for five years for other activities within the EEZ and RFMO-managed areas (draft Art 5.5(a)–(c) ALT 2). Members with a proportion of annual worldwide marine catch of less than 0.7 percent and annual subsidies for marine fisheries activities of less than USD 25 million could ask the Fisheries Subsidies Committee to extend these periods.

The author observes that while the first strategy gives developing nation members more flexibility, the second approach more explicitly advances the agreement’s primary objectives. The willingness of members to compromise on these topics will probably decide the final path to be taken and, maybe, the success of negotiations.

#### **IV. A GLOBAL DIALOGUE ON FISHERIES SUBSIDIES**

USA, China and EU have been global leaders. Whereas China spends a lot of money every year to encourage ocean fishing, including fuel subsidies, which have been criticised for incentivizing fishing regardless of fish population health, USA is a supporter of restrictions on harmful fisheries subsidies, and it has highlighted restrictions on harmful fisheries subsidies as a major area where trade agreements may contribute to environmental protection and development. The author has tried to compare the three different perspectives of three global leaders on fisheries subsidies and also what India has to say in the said matter.

***(i) USA***

Since 2001, the US has pursued promises to minimise detrimental fisheries subsidies and offer greater transparency for fisheries subsidies as part of the Doha Round of World Trade Organization (WTO) discussions. The US will continue to seek and support multilateral commitments on fisheries subsidies at the WTO. The United States is advocating clarity in fisheries subsidies and their eventual abolition in the Asia-Pacific Economic Cooperation (APEC) forum, as expressed in the 2014 Xiamen Declaration of the APEC ocean-related Ministerial Meeting. In the ongoing free trade agreement negotiations for a Trans-Pacific Partnership (TPP) agreement with 11 other Asia-Pacific countries and a Transatlantic Trade and Investment Partnership (T-TIP) agreement with the European Union, the US is also pursuing ambitious commitments to discipline harmful fisheries subsidies.<sup>19</sup>

***(ii) European Union***

Fleet, aquaculture, and processing, collective activities and infrastructures, and sustainable development of fisheries regions were among the EU's fisheries subsidies. Management, control, scientific guidance, and research were among the indirect subsidies. The EU fisheries sector receives around €850 million in structural support each year, including subsidies for vessel modernization and €150 million for access agreements. The EU's commitment to control, enforcement, and data collecting are capped at around €50 million per year. Since the 1970s, EU subsidies to boost industry has been steadily increasing and regional development, as well as food security.

***(iii) China***

As mentioned above, China spends a lot of money every year to encourage ocean fishing, including fuel subsidies, which has been criticised for incentivizing fishing regardless of fish population health. China is the world's largest seafood producer. In 2013, China provided its fishing industry \$6.5 billion in subsidies. China announced a quantifiable aim for limiting fuel subsidies in its waters in 2015, but it's uncertain whether its policy on distant-water fishing (DWF) will alter. Fuel subsidies account for 94 per cent of China's fishing subsidies. Around 95% of China's fishery subsidies were damaging to the environment. China suggested banning some subsidies that contribute to overcapacity and overfishing in June last year, with progressive reductions rather than an outright ban, to "give space for sustainable social and economic development."

***(iv) India***

The Indian government offers direct and indirect subsidies to the fishing industry. Subsidies for the

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<sup>19</sup> 'Recommendation 5: International - Fishery Subsidy' (*National Ocean Council Committee on IUU Fishing and Seafood Fraud*) <[www.iuufishing.noaa.gov/RecommendationsandActions/RECOMMENDATION5.aspx](http://www.iuufishing.noaa.gov/RecommendationsandActions/RECOMMENDATION5.aspx)> accessed 4 October 2021

acquisition of vessels, gear, and engines, as well as fuel subsidies and aquaculture aid, are all examples of direct subsidies. Indirect subsidies cover financial aid for various welfare initiatives, the construction of ports, fishing harbours, and fish landing centres, and the development of post-harvest and market infrastructure. Subsidies to marine fisheries development infrastructure and post-harvest activities, as well as export subsidies, are regarded as damaging subsidies among the many categories.

The proposed WTO rules will affect subsidies or grants for buying or modernising boats, engines, fishing gear, and other fishing equipment (iceboxes, GPS, communication systems, fish finders) in mechanised sectors, as well as the HSD fuel tax exemption for mechanised boats in India, according to the WTO's draft proposals on subsidies released in 2007.

## **V. FUTURE CHALLENGES IN FISHERIES AND AQUACULTURE**

FAO (1999c) identified a number of significant concerns that cover the entire sector and are of primary policy importance when assessing future difficulties for the fisheries sector.<sup>20</sup>

1. Maintaining the contribution of fisheries and aquaculture to food security, employment, national economic development, and recreation are among these concerns. Fish contributes to food security in a variety of ways, depending on geography, access to markets, and affordable technology. These include fish produced for direct local consumption, as well as aquatic products of all kinds that can be sold domestically or exported for funds, as well as those that generate income through recreation, tourism, and other means.
2. By improving data collection and scientific assessment, the foundation for fisheries management and aquaculture development may be strengthened, allowing for more rational and informed management and development decisions. This necessitates a multi-faceted approach in which (i) data users are consulted to ensure that they receive the data they require for their work, (ii) appropriate data collection mechanisms and data management systems are in place, (iii) a national commitment to provide data exists, and (iv) FAO and non-FAO regional fishery bodies, as well as other appropriate institutions and organizations, are involved in regional data collection.
3. As fisheries resources grow scarcer, regional fishery conflicts could be expected to intensify; boosting national capacity building and regional institution enhancement; producing objective governance performance metrics; supporting unified management techniques and improved coordination among regional institutions to address growing issues of mutual interest.

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<sup>20</sup> Veravat Hongskul, 'Into the Next Millennium: Fishery Perspective' (1999) FAO RAP 1999/26 Working Paper Series 1/3, 10 <<https://www.fao.org/3/x6947e/x6947e00.htm#Contents>> accessed 3 October 2021

4. Increasing stakeholder participation in national and regional processes to facilitate more transparency in fisheries sector decision-making at all levels. Such transparency, which is now widely advocated in many international fisheries instruments, has the benefit of facilitating access to, and distribution of, high-quality, timely information in the most appropriate formats, in support of responsible fisheries and aquaculture, as well as commerce.
5. Reducing by-catch and discards through the use of more selective gear and fishing operations, as well as developing innovative and value-added processing and market development for currently discarded species, and expanding and promoting uniform quality criteria for internationally traded fish and fish products. Prevention of post-harvest losses should be pursued as a matter of high priority in the interests of food security and the best use of limited resources; promoting cooperation in the fish trade in order to avoid disputes and imposition of sanctions; minimising the impact of international fish trade on those groups most vulnerable to food insecurity.

The region's aquaculture industry has a lot of room for expansion. Improvements in technology and resource utilisation, intensification, integration of aquaculture with other farming activities, and the development of new aquaculture regions could all contribute to this rise. Aquaculture, on the other hand, will encounter severe hurdles, including:

- a) meeting the expanding demands for seed, feed and fertilizers, in terms of quantities and quality;
- b) abatement in production losses through improvement in fish health management;
- c) gradually severe competition with another resource (land/water/feed) users;
- d) denigrating the quality of water supplies as a consequence of aquatic pollution;
- e) a successful amalgamation of aquaculture with other farming activities, and promotion of small-scale low-cost aquaculture in aid of rural development;
- f) augmentation in environmental management including depletion of environmental impacts and avoidance of risks to biodiversity through better site selection, congruous use of technologies, including biotechnologies, and more streamlined resource use and farm management; and
- g) affirmation of food safety and quality of products.

While some increase in marine capture fishery production may be expected in the long run as the benefits of effective management are realised and production from under- and non-utilized resources is enhanced, the primary goal for marine fisheries in the medium term is to make sure that production and the overall contribution of marine fisheries to global food security are at least sustained.

Improved and responsible stock management is the major issue facing marine fisheries in the medium to long term. Such management necessitates the cautious regulation of production (ideally, taking into consideration both inputs and outputs in a fishery) so that target stocks are not subjected to the excessive effort, resulting in overfishing. Furthermore, ecosystem management, which considers the effects of fishing on non-target stocks, is becoming increasingly frequent, adding still another layer of complexity to the management process.

## **VI. THE ACTUAL TROUBLE WITH SUBSIDIES**

Subsidies to fisheries are not all negative. However, capacity-enhancing subsidies contribute to overfishing by artificially raising profits, either by lowering the cost of fishing or by increasing the money fishers get.

Subsidies might take the form of tax breaks and loans or grants for infrastructure development. In reality, they may result in situations where fishing boats get discounted fuel in order to access remote fishing areas that would be too costly to reach otherwise. Alternatively, businesses may get funding to acquire otherwise pricey fish-finding technologies, gear, and vessel modifications. Even beneficial subsidies might be detrimental in the wrong hands. Thus, the WTO discussions seek to reduce subsidies to fishermen who participate in illicit, unreported, and unregulated fishing (IUU).

According to a survey issued in July by academics at the University of British Columbia and backed by the NGO Oceana, China leads the list of damaging subsidisers, followed by Japan, the EU, South Korea, Russia, the United States, and Thailand in order of contribution amount. Over two-thirds of detrimental fisheries subsidies are funded by the top ten largest subsidisers. The other 164 member nations of the WTO contribute far less to damaging fishing subsidies. Ironically, those who contribute the least often bear the brunt of the consequences of diminishing fish fisheries. “Harmful fisheries subsidies allow affluent nations to engage in industrial-scale distant-water fishing in poor countries’ seas.

## **VII. WTO’S FISHERIES-SUBSIDIES CURBS NEEDS BALANCE: INDIA’S RESPONSE**

India is right, developing nations that don’t do distant-water fishing must not be clubbed with rich nations that do.

India’s worries, as expressed by Union commerce and industry minister Piyush Goyal, are that several nations’ unjustifiable subsidies and overfishing are harming Indian fishermen and their livelihoods. To achieve the desired balance in the draft text, it is critical that large subsidy providers—such as Japan, Spain, China, South Korea, and the United States—assume more responsibility for reducing their subsidies and fishing capacities in accordance with the principle of “polluter pays.” To achieve a more equitable agreement, it is necessary to embrace the notion of “shared but differentiated” duties. These global fisheries subsidies endanger low-income nations that rely on fish for food sovereignty. India would fight any effort to phase off support to fishermen in underdeveloped countries. Differentiated treatment includes



safeguarding the livelihoods of disadvantaged fishermen while also addressing concerns about food security. India's position is that the WTO agreement must offer developing countries with policy room to grow the fisheries industry and a longer transition time for subsidy elimination. The proposed language must take into account the developing world's current and future fishing demands.<sup>21</sup>

India's particular concerns with the draft text do not concern the unique and differentiated treatment accorded to small-scale subsistence fishers. Indeed, one of the clauses stipulates that developing nation members, including LDC members, may award or sustain subsidies for low-income, resource-poor, and livelihood fishing or fishing-related activities up to 12 nautical miles measured from baselines. The problem is primarily with the effort to establish a schedule for subsidies provided or maintained by developing nation members, particularly LDC members, for fishing or fishing-related businesses inside their Exclusive Economic Zone (EEZ), which would have their exemptions revoked in a few years. Such a deadline constrains India's blue economy plans aimed at developing the country's fishing industry sustainably. India intends to leverage its EEZ by strengthening its deep sea fishing capability. For these reasons, India has requested that poor countries that do not participate in distant-water fishing be excused from subsidy bans for 25 years, taking their development requirements into consideration, while wealthier countries should phase down their fisheries subsidies far before that time.

India's objections must undoubtedly be addressed in order to achieve a more fair and equitable WTO agreement on global fisheries subsidy reduction.

### **VIII. A SEA CHANGE: CONCLUSION AND SUGGESTED REFORMS**

While we wait for the discussions to be completed, it's worth considering what success might entail. Securing an agreement would demonstrate that the WTO is still capable of enabling difficult international negotiations, which would be a triumph in and of itself given the WTO's recent track record. By straining the limits of its mandate, the WTO will have to adapt and become more agile in dealing with extraneous international law, national decision-making bodies, and the intricate network of external international organisations with fisheries competence.

While it may be a stretch, we can question whether victory on fisheries subsidies will pave the way for regulations on other environmentally destructive subsidies — such as the trillions spent annually to support fossil fuels — or even pave the way for an agreement relaxing existing limits on green subsidies.

Finally, the author observes that success will have no bearing on WTO Members' ability to lawfully adopt trade-restrictive fisheries protection measures as coastal, port, or market states, because such measures will often violate trade disciplines and their WTO consistency will frequently hinge upon successful invocation

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<sup>21</sup>The Financial Express, 'WTO's fisheries-subsidies curbs need balance' (*Financial Express* 5 November 2021) <<https://www.financialexpress.com/opinion/wtos-fisheries-subsidies-curbs-need-balance/2362951/>> accessed 2 February 2022

of the WTO Agreements' exceptions. However, it is possible that a panel (or, dare we hope, an Appellate Body division...) will be more receptive to measures justified under GATT Articles XX(a) or (g).

*(i) Recommendations*

1. Get rid of capacity-enhancing incentives, which encourage overfishing.
2. Increase useful subsidies, such as financial aid for data collection, control, and enforcement, as well as those that improve fisheries management by lowering fishing capacity and effort, reducing by-catch, and supporting essential policy goals;
3. Significantly improve transparency and accountability in subsidy reporting, including effective WTO notification requirements.
4. Demand greater clarity in the industry's financial records to properly quantify the need for subsidies;
5. Take into account the unique problems of developing countries and small-scale fishermen, which must be addressed in a way that does not jeopardise the resource base;
6. Increased monitoring of the impact of these subsidies on the industry to assess which subsidies are most useful;
7. Redirect capacity-building subsidies to foster sustainable activities, such as 'fishing for plastic' rather than fishing exhausting fish stocks, resulting in a win for fishermen (who keep their subsidy money), a win for the ocean (which is cleaned of plastic), and a win for the fish (who may not be targeted by fishing vessels);
8. Increase the number of job opportunities for fishermen by bringing education and skill development to coastal communities.