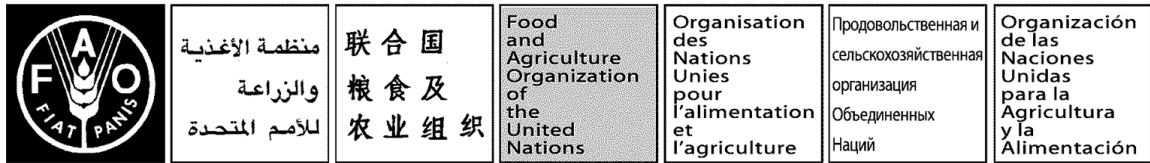


September 2023

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<b>WESTERN CENTRAL ATLANTIC FISHERY COMMISSION (WECAFC)</b>
<b>NINETEENTH SESSION</b>
<b>Bridgetown, Barbados, 6-8 September 2023</b>
<b>World Trade Organization (WTO) Agreement on Fisheries Subsidies</b>

This paper informs on the outcome of the WTO negotiations for a new international legally binding instrument (ILBI) to prohibiting harmful fisheries subsidies, which are a key factor in the widespread depletion of the world's fish stocks. The Agreement on Fisheries Subsidies prohibits subsidies contributing to (1) IUU fishing, (2) already overfished stocks, and (3) fishing and related activities located outside a member or regional fisheries management organization's jurisdiction.

#### **Suggested Action by the Commission**

The Commission is invited to discuss the potential implications and impacts of the WTO Agreement on Fisheries Subsidies on the WECAFC and its Members.

## 1. Introduction

Subsidies can be defined as a financial contribution made by a government or any public body that confers a benefit and are generally considered to be trade distorting. They provide cost advantages to subsidized fisheries and disadvantage those unsubsidized.

Negotiations on a World Trade Organization (WTO) Agreement on Fisheries Subsidies began in 2001 at the Ministerial Conference and the negotiation mandate was renewed at the 11th Ministerial Conference in 2017. The 2022 Agreement on Fisheries Subsidies prohibits subsidies to fisheries engaged in IUU fishing and fishing of already overfished stocks. However, it does not address other key issues in the 2017 Ministerial mandate (i.e., subsidies contributing to overcapacity and special and differential treatment (SDT) for developing country members).

In the 1990s, multilateral organizations, such as the FAO, raised concerns about the economic and environmental impact of fisheries subsidies contributing to overcapacity and overfishing. Subsidies provide capital to fisheries to expand fishing fleets and increase capacity to fish. Some studies observed that subsidies lead to excess capacity in fisheries, which may contribute to overfishing.

In 2001, WTO members agreed to “clarify and improve existing WTO disciplines on fisheries subsidies” in addition to negotiating clarifications to the WTO Agreement on Subsidies and Countervailing Measures. The 2005 Hong Kong Declaration clarified goals of the negotiations, specifically calling for the prohibition of certain subsidies and establishment of special and differential treatment (SDT) for developing country members. Lack of consensus on certain issues (e.g., SDT provisions), the general scope of prohibited subsidies, and the broader stalemate among members that impeded progress in the Doha round of trade talks reportedly slowed down negotiations from 2010-2015.

The negotiations gained momentum after countries adopted the UN Sustainable Development Goals in 2015. Goal 14.6 aims to, among other things, prohibit subsidies contributing to overcapacity, overfishing, and IUU fishing. On June 17, 2022, WTO members reached an agreement to prohibit certain fisheries subsidies and agreed to continue negotiations on outstanding issues, including long-debated disagreements on the extent of flexibilities offered in SDT provisions and the scope of exceptions to certain subsidies.

## 2. The WTO Agreement on Fisheries Subsidies<sup>1</sup>

The World Trade Organization (WTO) Agreement on Fisheries Subsidies (the Agreement), adopted at the 12th Ministerial Conference on 17 June 2022, marks a major step forward for ocean sustainability by prohibiting harmful fisheries subsidies. The new disciplines will have important, positive effects on the sustainability of marine fish stocks and fisheries by: curbing subsidies to illegal, unreported and unregulated fishing; prohibiting subsidies to fishing on overfished stocks; and prohibiting subsidies to fishing on the unregulated high seas. The new Agreement thus delivers on the mandates of SDG Target 14.6<sup>2</sup>.

According to the WTO Director General the Agreement will curb the estimated USD 22 billion<sup>3</sup> in annual global public support that contributes to the depletion of marine resources. Successful

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<sup>1</sup> <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/33.pdf&Open=True>

<sup>2</sup> “By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation.”

<sup>3</sup> Sumaila UR, Ebrahim N, Schuhbauer A, Skerritt D, Li Y, Kim HS, Grace Mallory T, Lam VWL, Pauly D, (2019), *Updated estimates and analysis of global fisheries subsidies, Marine Policy*, November

implementation of the Agreement by all WTO members will help secure the livelihoods of the 260 million<sup>4</sup> people who depend directly or indirectly on marine fisheries, and thus constitute a triple win for trade, development, and the environment.

## **2.1 Prohibition on subsidies contributing to IUU fishing**

The first substantive discipline prohibits subsidies for illegal, unreported and unregulated (IUU) fishing. The definition of IUU fishing is taken from another international agreement, in this case the International Plan of Action to Prevent, Deter and Eliminate IUU fishing<sup>5</sup>. Once a final finding or determination has been made against a vessel or operator for IUU fishing or fishing related activities, and subject to the entity that made the determination following certain procedural rules, including notification of the determination to the WTO, the subsidizing member is required to stop any subsidies to the vessel or operator. The entities that can make these findings are the coastal member for areas under its jurisdiction (in nearly all cases this would be the member's Exclusive Economic Zone, or "EEZ"), the flag State Member for vessels flying its flag, or a Regional Fisheries Management Organization or Arrangement (RFMO/A) for areas and species under its competence.

The Agreement includes procedural steps that should be respected by a coastal Member in making an IUU determination, such as basing the determination on relevant factual information; informing the flag State Member and, if known, the subsidizing member; providing an opportunity to exchange information; and notification to the other Member(s) and to the WTO of the final determination. Similarly, the Agreement provides that RFMO/As are to follow their own procedures and international law, including through the provision of timely notification and relevant information, in making IUU determinations.

The Agreement provides for a two year "peace clause" for developing country and Least Developed Countries (LDC) members within their EEZs.

## **2.2 Prohibition on subsidies regarding overfished stocks**

The second substantive provision is the prohibition on subsidies for fishing or fishing related activities regarding overfished stocks. The Agreement indicates that the responsibility for recognizing that a stock is overfished rests with the coastal state for areas under its jurisdiction, and with an RFMO/A for areas and species under its competence. These responsibilities are consistent with provisions of the United Nations Convention on the Law of the Sea (UNCLOS) and the UN Fish Stocks Agreement (UNFSA).

Under UNCLOS, a coastal State has - full sovereignty over its territorial sea; sovereign rights for the management and exploitation of marine resources in its EEZ; and a duty to cooperate with other states sharing the same fish stock. UNFSA elaborates on the provisions in UNCLOS on shared stocks and highly migratory stocks by, inter alia, providing a legal basis for the establishment of RFMO/As.

The Agreement allows, in certain circumstances, the provision of subsidies to fishing regarding an overfished stock. In particular, such subsidies must be for rebuilding the stock or the subsidizer must have other measures being implemented to rebuild the stock to a biologically sustainable level.

Similar to prohibition on subsidies contributing to IUU fishing, the Agreement provides for a two year "peace clause" for developing country and LDC members within their EEZs.

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<sup>4</sup> Teh LCL, Sumaila UR, (2013) *Contribution of marine fisheries to worldwide employment*, Fish and Fisheries, vol. 14, iss. 1, March.

<sup>5</sup> International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, FAO, 2001.

### **2.3 Prohibiting on subsidies regarding fishing on the unregulated high seas (i.e. fishing and related activities located outside a member or regional fisheries management organization's jurisdiction)**

The third substantive provision is a straightforward prohibition on all subsidies to fishing and fishing related activities in areas outside the jurisdiction of coastal members and non-members and outside the competence of a relevant RFMO/A, that is, in the unregulated high seas. This provision of the Agreement applies equally to all members – developed, developing and LDCs.

### **2.4 Notification and transparency**

A key element in the Agreement on Fisheries Subsidies relates to notifications and transparency. Under the Agreement, all members already are required to notify their subsidies every two years. As part of these notifications members will be required to notify the type or kind of fishing activity being subsidized and, to the extent possible, to provide information on stock status, conservation measures, fleets and vessels being subsidized, along with catch data. In respect of the additional information other than on fishing activity, developing country members with a share of the global volume of catch of not more than 0.8%, and LDC members, can provide this information every four years, instead of every two years.

Other notification requirements relate to measures concerning implementation and administration of the Agreement, as well as descriptions of fishing regimes and participation in RFMO/As.

### **2.5 Entry into force**

For the Agreement to become operational, and thus deliver its sustainability results, two-thirds of WTO Members have to deposit their “instruments of acceptance” in the WTO. This means they have to complete their domestic acceptance procedures.

### **2.6 Termination**

The final Article of the Agreement states that if comprehensive disciplines are not adopted within four years of entry into force, the Agreement is terminated unless WTO members decide otherwise. The objective of this clause is to ensure that negotiations on enhanced disciplines, particularly in respect of subsidies contributing to overcapacity and overfishing, are completed within a reasonable time-frame after the Agreement enters into force.

### **2.7 Special and differential treatment**

Appropriate and effective special and differential treatment has been an integral part of the fisheries subsidies' negotiations. In addition to the two-year dispute settlement peace clauses for developing country members and LDC members, the Agreement requires members to exercise due restraint when raising matters involving an LDC member and to take into account that member's specific situation when exploring solutions. Furthermore, as noted above, developing members with a share of the volume of global fish catch of not more than 0.8%, and LDC members, can provide notifications of most of the required fisheries related information every four years instead of every two years.

## **3. Some remarks**

The WTO Agreement on Fisheries Subsidies represents an historical achievement. It is the first SDG target to be fully met; the first SDG target to be met through a multilateral agreement; the first WTO agreement to focus on the environment; and only the second agreement reached at the WTO since its inception.

The Agreement is comprehensive and innovative, creating new obligations including in areas that are new for the WTO. Developing country and LDC members may find it particularly challenging to integrate fisheries-related elements into their subsidies policies, to put in place their fisheries information and management systems, and to meet the new notification requirements, particularly on fisheries-related information. For that purpose, the Agreement envisages the creation of a voluntary WTO funding mechanism, to provide targeted technical assistance and capacity building to developing country members, for the purpose of implementing the new disciplines.

The FAO is specifically mentioned in two parts of the Agreement, each with a distinct function to perform. First, the FAO is designated as a reference international agency for collaboration with WTO to provide technical assistance and capacity building to developing countries in implementing the Agreement's requirements. The FAO will have clear roles within the recently announced WTO funding mechanism for the implementation of the Agreement. In addition, the WTO can consult with FAO on the recently created Committee on Fisheries Subsidies, which is responsible for providing a forum for consultation between Members, assessing information received related to the Agreement, and recommending eventual changes to the Agreement's implementation.

The new WTO disciplines on fisheries subsidies and their implementation encompass the whole national fisheries management system, and related institutional and technical capacities, from fishery stock status appraisal to fishery management, and IUU fishing deterring and elimination.

Implementation of the Agreement will require certain measures to be adopted by individual countries including revised legislation, monitoring and reporting skills, specific information and database systems. FAO, through its technical expertise and multidisciplinary capacity, could be highly functional to support the required capacity development.

In addition, regional fishery bodies (RFBs), in particular by the regional fisheries management organizations (RFMOs) have a role to play in the Agreement's implementation. FAO could assist RFBs to support the implementation of the Agreement and to establish regional cooperation frameworks as required. For instance, FAO information systems developed with RFMOs address the management and monitoring of fishery resources in the ABNJ including combatting IUU fishing, and include databases of information and data relevant to environmental impact assessments.

The Agreement is a positive step forward for fisheries sustainability, but much work lies ahead, and cooperation and collaboration between WTO and FAO will avoid duplication of efforts, minimize reporting burden to national administrations, and optimize the use of human and financial resources.

Finally, according to the WTO Director General the Agreement will curb the estimated USD 22 billion<sup>6</sup> in annual global public support that contributes to the depletion of marine resources. Successful implementation of the Agreement by all WTO members will help secure the livelihoods of the 260 million<sup>7</sup> people who depend directly or indirectly on marine fisheries, and thus constitute a triple win for trade, development, and the environment.

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<sup>6</sup> Sumaila UR, Ebrahim N, Schuhbauer A, Skerritt D, Li Y, Kim HS, Grace Mallory T, Lam VWL, Pauly D, (2019), *Updated estimates and analysis of global fisheries subsidies, Marine Policy*, November

<sup>7</sup> Teh LCL, Sumaila UR, (2013) *Contribution of marine fisheries to worldwide employment*, Fish and Fisheries, vol. 14, iss. 1, March.