

An aerial photograph of a large fleet of fishing boats, likely tuna boats, docked in a harbor. The boats are viewed from above, showing their decks, masts, and various pieces of equipment. The water is dark, and the sky is a pale blue. The boats are arranged in several rows, with some larger vessels in the center and smaller ones towards the edges. The overall scene depicts a busy maritime hub.

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WORLD TRADE ORGANIZATION FISHERIES SUBSIDIES AGREEMENT: WHAT IS THE CATCH?

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INTRODUCTION

After many years of negotiations, the 12th World Trade Organization (WTO) Ministerial Conference ([MC12](#)), which took place June 12-17, 2022, adopted a slimmed-down Interim Fisheries Subsidies Agreement. It was hailed as an agreement to save fish globally and to support and accelerate a shift to sustainability. However, these notions are in fact only meekly reflected in the [draft Agreement](#) that was submitted for Ministers’ consideration at the Conference, as well as in the [adopted Interim Agreement](#). Negotiations will continue at the WTO to achieve a final Agreement, which should fully attain [Sustainable Development Goal \(SDG\) 14.6](#).

Governments continue to favor large-scale fisheries, which are seen as more profitable than small-scale. Globally, [most subsidies \(81%\) are provided to large-scale fishing](#) in the form of capacity-enhancing subsidies, with fuel subsidies being the highest overall subsidy type. If the current situation continues, large-scale fishing will continue to contribute to the doomed status of global fisheries to the detriment of the world’ small-scale fishers, jeopardizing their human right to adequate food and nutrition (RtFN) as well as other related rights, such as the right to work. This could further exacerbate political and economic marginalization of small-scale fishers. It is these small-scale fishers who provide an importance source of protein to many marginalized segments of the world population.

This article seeks to unpack the contents of WTO’s Fisheries Subsidies Agreement with a specific focus on the prohibited subsidies, and draws a conclusion on how the Agreement will impact small-scale fishers.

PEER-REVIEWERS |

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PHOTO | [Tom Fisk](#)

CONTENTS OF THE DRAFT FISHERIES SUBSIDIES AGREEMENT

The draft Fisheries Subsidies Agreement that was submitted to Ministers for their consideration at MC12 contained three categories of prohibited subsidies: 1) subsidies ‘contributing’ to Illegal, Unreported and Unregulated (IUU) fishing; 2) subsidies to overfished stocks and 3) subsidies contributing to overfishing and overcapacity. These will be discussed in turn.

1) Illegal, Unreported and Unregulated Fishing

IUU fishing is a major cause of overfishing and can be witnessed all over the world. The first category concerns a subsidy prohibition for a vessel or operator if determined to have engaged in IUU fishing. This type of prohibition is limited in scope. First, it does not discipline subsidies, which ‘contribute’ to IUU fishing. Rather, it is triggered after IUU fishing has actually taken place. Second, the prohibition applies to a specific single vessel or operator. Third, most developing countries do not have the required resources to make IUU fishing determinations, such as helicopters to monitor their own waters, on-board inspection, and quarantining of vessels. Fourth, even if a domestic legal process is able to determine that a vessel was engaged in IUU fishing, the country where this takes place must also comply with various procedural requirements vis-à-vis the flag state (i.e. the country in which a vessel is registered and has authority over it on the high seas). This includes having to provide information, allow for consultations, take the flag state’s comments into consideration, and notify the WTO. These requirements also apply if the subsidizing country is known, i.e. most requirements would apply twice. Fifth, the subsidy prohibition is temporary. The subsidizing country has the right to limit the period of subsidy prohibition based on its assessment of the severity of the crime, after which it can continue subsidizing. At any rate, the subsidy prohibition lasts as long as the associated sanction. In the case of short-lived sanctions, such as penalties (which may be paid shortly afterwards), the subsidy prohibition is also short-lived.

Under this category, there is also an additional prohibition for ‘fishing related activities in support of IUU fishing’, which was inserted on the behest of the United States of America (USA) after submission of its ‘forced labor’ proposal. Fishing-related activities include processing of fish on shore. There is always the risk that a processing plant sources fish from a vessel or operator engaged in IUU fishing, or that it does not follow the IUU regulations of a certain WTO Member, for instance, with respect to documentation requirements. In contrast, an affirmative determination that a single vessel has been engaged in IUU fishing is more difficult to obtain, and the subsidy prohibition is therefore difficult to enforce. This could actually make large-scale on-board fish processing more competitive than on-shore processing, and labor conditions on vessels are undoubtedly less amenable than those in a factory. Thus, an unintended consequence of this provision could be even worse labor conditions for fish processors.

2) Overfished Stock

The second category concerns a prohibition for subsidies for fishing an overfished fish stock. It is not mandatory to determine a fish stock status, and hence it is difficult to establish the finding of an overfished stock. In any case, how to define a “biologically sustainable level” is very flexible as well: it is based on reference points which might include the concept of “Maximum Sustainable Yield” or alternative methods, which are pertinent in the case of data-poor fisheries. Furthermore, Regional Fisheries Management Organizations (RFMOs) like the General Fisheries Commission for the Mediterranean (GFCM) or the International Commission for

the Conservation of Atlantic Tunas (ICCAT), or other Regional Fisheries Management Arrangements (RFMAs), can decide a fish stock status without basing themselves on figures. In this way, political decision-making by such bodies is implicitly supported. This means that, for instance, if sufficient countries fishing in the Mediterranean Sea want to continue subsidies, they could declare the fish stock as sustainable or unsustainable, regardless of actual fish stock status. Finally, in the event that a fish stock is found to be overfished, subsidies can continue if they are ‘good’ subsidies or part of a long-term plan to rebuild the stock to sustainable levels.

3) *Overfishing and Overcapacity*

The third category concerns subsidies contributing to overfishing and overcapacity. Examples of such subsidies are subsidies to construct or renovate fishing vessels, subsidies to the purchase of machines and equipment for vessels, fuel subsidies and subsidies covering operating losses of vessels or fishing related activities. This was the most significant part of the draft Agreement. It also directly relates to SDG 14.6.

The draft text for negotiation at MC12 contained a prohibition on subsidies contributing to overfishing and overcapacity but was largely deleted in the interim agreement that was finally adopted in the early hours of Friday June 17, 2022. Further negotiations will focus on adding provisions for subsidies that contribute to overfishing and overcapacity.

Imbalance was a major contention. The draft text was drafted in such a way that enabled more developed countries – the major subsidizers – to continue subsidies, while developing countries with lesser capacity would be impacted if they do not have the means and resources to justify their subsidies. The draft contains flexibility for subsidies to artisanal fisheries in territorial waters, i.e. the first 12 nautical miles into the sea measured from the baseline (which usually follow the coast, but not always, particularly if there are islands close to the coast). However, artisanal fisheries were defined as “low income, resource poor and livelihood” fisheries. In other words, subsidies would be protected only if fishing is for one’s own livelihood, and if the fisher has a low income and is resource poor. In reality, most artisanal fishers would not be covered by this flexibility, as they may move further out into sea, and also sell their fish to others instead of eating it all themselves.

Major subsidizers could continue their subsidies under the so-called “sustainability flexibility”, allowing for the continuation of “sustainable” fisheries subsidies, if a country can demonstrate that measures are taken to maintain a “biological sustainable level” of the relevant fish stock. These ‘measures’ could be those taken by the country itself, or by another country, or by the relevant RFMO/A.

This would essentially be demonstrated by providing information to the WTO together with a country’s general WTO subsidy notification, which takes place at 2-year intervals. This would essentially guarantee a minimum period of subsidization for 2 years if the stock were to become depleted after the initial 2 years.

Countries would not need to ensure that said “measures” maintain a “biological sustainable level”, but rather that there are measures in place, which have sustainability as an objective. The word “maintain” means that the relevant fish stock is at a biologically sustainable level when the measures are taken. It would not require Members to demonstrate that fish stocks are sustainable when the subsidy is first

implemented. By definition, stock status refers to a historical stock status. The text did not clarify to which period the determination of biological sustainability should relate to. It did not require Members to furnish the most recent information, if available. So countries could rely on fish stock assessments that were conducted years ago, and which might not reflect the actual fish stock status.

Sustainability would need to be assessed vis-à-vis a “relevant fish stock”. Fish stock status can be assessed at the level of species but also for groups of species, or for all species. Keeping “relevant” undefined allows for a lot of flexibility. For instance, if stock levels are biologically sustainable for 60 species but considered overexploited for 40 species, the total for the 100 species might still be considered biologically sustainable. However, in reality, a Member might be able to provide subsidies for fishing of up to 40 overexploited species.

The sustainability of species belonging to the same ecosystem or associated with or dependent upon the target stocks was not considered. Nonetheless, the ecosystem approach is considered best environmental practice, and has been embedded in various national regulations, such as the 1996 *New Zealand Fisheries Act*, amongst others. A country providing subsidies to capture and kill dolphins to maintain levels of tuna could be considered sustainable.

INTERIM AGREEMENT

The adopted Agreement at MC12 eliminates the subsidy prohibition related to overfishing and overcapacity.

A main exception is the prohibition of subsidies to fishing in high seas in areas not under the competence of an RFMO or RFMA, sometimes erroneously referred to as “unregulated high seas”, which was maintained in the adopted agreement.

Unfortunately, almost no waters seem to be covered by this prohibition as virtually all high seas are within the competence of at least 1 RFMO/A, with possible exceptions such as the high seas of the Arctic Ocean and a small strip beyond the waters of Alaska. These areas, however, are arguably covered by RFMAs as well. “Competence” of an RFMO/A does not equate with management or sustainability. For instance, countries like the [UK are fishing for Patagonian toothfish in an area under the competence of the Commission for the Conservation of Antarctic Marine Living Resources \(CCAMLR\)](#), after parties were unable to agree on catch limits.

The adopted Agreement equally reduces some of the notification requirements. It also deletes the proposal driven by India for the Agreement to cover fuel subsidies, which benefit fishing but are also provided to other sectors (e.g. to all vessels including container vessels, or other sectors of the economy), which refer to so-called “non-specific” fuel subsidies.

WHAT DOES THIS MEAN FOR SMALL-SCALE FISHERS?

Overall, the outcome of the slimmed-down Agreement is arguably similar to the provisions of the draft Agreement – the end result in both texts is that the bulk of fisheries subsidies can continue. WTO Members have committed themselves to continue negotiations to add further provisions including on overfishing and overcapacity in order to have ‘comprehensive disciplines’ responding to SDG 14.6.

The current Agreement is still to be ratified. Once entry into force is attained through ratification by 2/3 of WTO Membership, i.e. 109 WTO Members (EU counting as 28

Members), the agreement will however cease to exist if, 4 years after entry into force, agreement on comprehensive disciplines has not been reached. This may initially be a barrier to ratification, as parliaments will be asked to ratify a partial agreement on which negotiations are ongoing. As a result, we could have an agreement which will be 'hanging in the air' for a while yet. Time will tell.

The fact that WTO Members were able to reach an agreement on fisheries subsidies is commendable. Nevertheless, this adopted Agreement can hardly claim to globally save fish, nor to support and accelerate the shift to sustainability. The continuation of subsidies will profit large-scale fisheries leaving out small-scale fishers. The world will most likely witness further depletion of fish stocks and degradation of marine resources, undermining the livelihood of small-scale fishers and coastal communities.

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