



Q & A

Small Scale Fishers and the World Trade Organization's Agreement on Fisheries Subsidies

What is the World Trade Organization and why has it made an agreement on fisheries subsidies?

The World Trade Organization (WTO) is a global organisation that has established rules on global trade since 1995 for its 164 member countries. Often the rules promote 'freeing' trade from government actions like subsidies, trade taxes, regulation and requirements that purportedly distort global trade.

The issue of fisheries subsidies first arose in 2001, progressing slowly and then stalling for several years before being given new life with the Sustainable Development Goals (SDG's) that called for their conclusion by 2020. Proponents argue that some types of fisheries subsidies make it possible for vessels to fish unsustainably or illegally and the removal of these subsidies would undermine such fishing. There are many different interests in the talks including large commercial fishing interests who want to protect their ability to continue to subsidise while preventing others, even poorer countries and smaller subsidisers, from being able to do so.

The Agreement on Fisheries Subsidies (AFS) was finally agreed at the 12th Ministerial Conference (MC12) in June 2022.

What does the Agreement on Fisheries Subsidies cover?

Broadly, the AFS covers subsidies relating to Illegal, Unreported and Unregulated Fishing (IUU), overfished stocks, and 'other subsidies'.

The 'scope' of the agreement is for subsidies relating to "marine wild capture fish and fishing-related activities at sea". This means that inland fisheries and aquaculture are currently excluded from negotiations. It defines fishing to include "searching for, attracting, locating, catching, taking or harvesting fish" or any activity that can be expected to result in those activities.

It also applies to "fishing-related activities" which includes the "landing, packaging, processing, transship-

ping or transporting of fish" and the "provisioning of personnel, fuel, gear and other supplies at sea". It's important that this is limited only to activities "at sea" as otherwise this can imply that any government support for assisting communities or local businesses that want to land, package or process fish harvested wouldn't be allowed. However even though it is in principle limited to coastal fishing, this latter part can affect inland fishing as well, as many involve shared investments and activities.

What is IUU fishing and who gets to determine it?

IUU stands for Illegal, Unreported and Unregulated fishing and stopping subsidies to this fishing is one of the main aims from the agreement. Currently only coastal states and Regional Fisheries Management Organisations (RFMOs) can make determinations on IUU fishing but the current proposal at the WTO expands this to include flag states for vessels with their flags.

The definitions of IUU fishing are currently being borrowed from the Food and Agriculture Organisation (FAO). Illegal fishing includes fishing without the permission of the country where the fishing is happening, against its laws and regulations or against the management measures of that country. Unreported is fishing that has not been reported or has been misreported to national authorities against the local laws or in areas of a regional management organisations looks after but misreported. Unregulated fishing essentially applies to fishing that goes against any conservation or management measures that a country has put in place.

There is a requirement for all Member's to have in place laws and regulations to ensure that IUU subsidies aren't given or maintained. This is to be ready when the agreement comes into force.

How does this affect small-scale fishers including so-called IUU fishers in developing countries?

A lot of small-scale fishing in developing countries could be classed as 'unreported', largely due to the current limits of fisheries department capacity to collect fish takings and associated infrastructure for such. Even gov-

ernment mechanisms for registration of fishing vessels and fishers may be limited. This means that many of the subsidy bans would apply to the actions of small-scale fishers regardless of their fishing intentions.

The current outcome on IUU fishing says that the subsidy bans won't apply to subsidies to IUU fishing in developing or least developed countries for fishing within their Exclusive Economic Zone (EEZ), the 200 nautical miles from the coastal baseline, for 2 years.

In addition, once the proposed timeframe passes all subsidies for fishing that may be determined to be IUU fishing will be prohibited.

There is uncertainty about the requirement mentioned above, to have laws in place to ensure IUU subsidies aren't given or maintained upon entry into force, and how this fit with the 2-year period.

How does the Agreement include 'overfished stocks' and what happens if our country doesn't have timely data on fish stocks?

The current proposals say that a country can't provide a subsidy for fishing regarding a fish stock that is deemed to be overfished.

This raises a number of concerns for those countries, largely developing countries, which don't have the capacity to monitor and manage their stocks. The developing countries who don't have the domestic capacity to monitor and rely on RFMOs will be placed at a disadvantage. It also raises the concern that the WTO, a body with no fisheries management experience may be making rulings about the management measures of a country.

What about small-scale fishers who don't have access to all the most up-to-date information about fish-stock assessments?

Again there is a proposal that developing and least developed countries subsidies relating to overfished stocks are allowed provided it takes place within the EEZ for a period of 2 years. For small-scale fishers this could be a problem especially if they don't have access to up-to-date fishing data on the status of stocks and regularly catch multiple species.

What does 'Other Subsidies' include in the Agreement?

'Other Subsidies' includes banning subsidies to fishing beyond the jurisdiction of a coastal member and the competency of a Regional Fisheries Management Organisation. This is said to capture subsidies to fishing on the

high seas but will really only apply to a fraction of that as most of the high seas is covered by RFMOs.

It also calls for governments to take special care and restraint if subsidising vessels not flying their flag or fishing stocks which the status of is unknown.

What happens now?

Now that an agreement has been reached, WTO Members are being asked (and pressured) to ratify it by going through their domestic processes such as parliamentary reviews and passing legislation. Each country is different but this most likely involves some process of review of the text and what it may mean legally. It is important that in these processes the voices of fisherfolk are represented.

The other decision from the Ministerial meeting was the commitment to continue negotiations to reach a comprehensive outcome on fisheries subsidies as the AFS fails to include subsidies on overfishing. This commitment however also included a clause stating that if there is no comprehensive outcome within 4 years of the AFS coming into effect, the AFS will be terminated. This can be changed by a decision of the WTO general council which presumably would rather hold on to an outcome than scrap it.

What do the ongoing negotiations include?

The negotiations on subsidies that contribute to overfishing and overcapacity as well as flexibilities for developing and least-developed countries were some of the most controversial and difficult at the Ministerial meeting. As such they got left out of the agreement with the aim to keep negotiating on them for a broader outcome later.

The Ministerial decision referenced two previous draft negotiating texts as the starting point for ongoing negotiations which will be discussed below. Already however many countries are considering new proposals or approaches to dealing with these issues.

How are subsidies for overfishing and overcapacity being addressed?

Currently there is a proposed list of subsidies related to overfishing and overcapacity that aren't allowed. These include subsidies for the construction, buying, modernising or upgrading of vessels; buying machines or equipment for vessels like fishing gear and engines, fish processing machinery, refrigerators or fish finding technology; for fuel, ice or bait; personnel costs, income support for operators; price support of fish caught; and for support at sea or operating losses.

These subsidies are provided to the large-scale industrial fishing fleets who are historically responsible for the overfishing of fish stocks. These subsidies are also used to support small-scale fishers with their boats and other costs, however they are not responsible for the current state of global fish stocks.

So at least the big subsidisers won't be able fund their fleets anymore?

Sadly it's not that simple. Following the list of banned subsidies (listed above), there is a proposal that says the countries can still use those subsidies provided that their stocks are sustainably managed. This means that those big subsidisers who have the fisheries management capacity to measure fish stocks and subsidising capacity are able to keep on subsidising. Those countries that have already subsidised the building of their fleets can still receive subsidies if they are fishing in someone else's waters provided those stocks are sustainably managed. This also means that those who have the greatest historical responsibility for the depletion of global fish stocks – the big subsidisers with their large capacity – aren't shouldering the burden of the bans.

What if our country doesn't have the technical capacity to demonstrate the sustainability of fish stocks?

This is one of the big issues with the proposal mentioned above and places those countries who don't have the capacity to manage (or report) their fish stocks, or rely on external agencies to support them with data and modelling, at a disadvantage. Big fishing nations like the EU, US etc will be able to provide accurate information about the status of all their stocks to the WTO allowing them to be able to continue subsidising as well as challenge any

country that is subsidising fleets that they believe aren't managing their stocks properly (or are seen as a commercial threat). For developing countries who rely on others to support them, this may only happen periodically and only on a number of targeted species, hampering their ability to provide support to fishers who want to expand.

Further all of the flexibilities in the proposed agreement are reliant upon a country having fulfilled all of the notification requirements. Those currently include a wide range of data and information about the fish stocks, conservation and management measures, fleets and vessels. Many developing countries already struggle to meet all the obligations for providing information to the WTO and making such things a requirement to utilise any flexibilities will result in the agreement being unworkable for many countries. This will have flow on impacts to small-scale fishers and those communities who would rely on those flexibilities to continue to receive government support.

What if we have developmental aspirations and need government support?

For countries that want to develop greater domestic fishing capacity and small-scale fishers who are wanting to grow their industry, the provision of subsidies that enhance capacity are critical. There are some proposals on the table to try address this.

The first starts by stating that any exemptions won't apply to developing countries whose annual share of global marine wild capture is over 10%. This is essentially aimed at China. Below this proposal the first level of exemption applies to developing countries providing subsidies for fishing within their EEZ or an RFMO for an as yet agreed period of time after the agreement is in force.



The next level of exemption applies to any Developing Country whose annual share of global marine wild capture is under 0.7% (but that's not an agreed level). The final level is for subsidies to small scale fishers who meet every criteria of being low income, resource-poor and livelihood fishing up to 12 nautical miles from the coastal baseline.

The other proposal is similar to the one above but contains some differences. It begins with a similar broad exclusion of any developing whose annual share of global marine capture is above a threshold, in this case it isn't specified. The exemptions are then provided to developing countries providing capacity enhancing subsidies for fishing with their EEZ and RFMOs with competing proposals for either 7 years after entry into force, or up until 2030. This is also combined with a 2 year transition period where other WTO members can't challenge them on providing such subsidies. The additional exemptions will apply to Developing Countries whose annual share of global marine wild capture is below 0.8% (again, not agreed upon), this only changes if they are above the threshold for 3 consecutive years. Finally there is a similar criteria based exemption for small-scale fishers who meet that criteria or fishing within either 12 or 24 nautical miles.

However, any proposal to ensure future growth and capacity for developing countries is facing major challenges in the negotiations from several developed countries. While expanding the ongoing exception to the exclusive economic zone for all developing and least-developed countries would best provide protection for small-scale fishers, this is being strongly resisted. This means that those most responsible for overfishing, and whom have already received their capacity building subsidies, are not being constrained but small-scale fishers who fish beyond 12 or 24 nautical miles are.

What does this mean for small-scale fishers in the future?

Losing important subsidies that support and sustain livelihoods and incomes for small-scale fishers in developing and least developed countries will be challenging by itself. This will have an even worse impact when coupled with the fact that many of these countries are reducing or removing (or already done) import duties on fish products under bilateral or regional Free Trade Agreements (FTAs).

These FTAs may also allow foreign fishing trawlers to access territorial waters under investment provisions. This means that small-scale fishers will have to compete with bigger producers, often from richer countries, even in their own markets without any support from their own governments. The way the negotiations are moving, it may be that these large producers are themselves con-

tinuing to receive subsidies. This may have the potential to further undermine small-scale fishing in many developing and least developed countries.

Small-scale fishers aren't really responsible for the devastation of global fish stocks so why do the talks include small-scale fishers?

The negotiations span all subsidies to all fishers in principle under all the three areas mentioned above. However there is a fight going on to secure exemptions for small fishers through Special and Differential Treatment as mentioned above. Currently the exemptions for small-scale fishers applies to low income, resource-poor or livelihood fishing and fishing related activities within the 12 nautical miles from the coastal baseline. The exemptions only apply for a limited time after which such subsidies would be considered illegal under the WTO.

How can we make sure that small-scale fishers don't lose critical government support?

Ratifying the existing AFS carries with it obligations without real benefits for developing countries and small-scale fishers. With the push to conclude comprehensive negotiations by the next Ministerial in February 2024, we are running out of time to ensure that the voices and concerns of small-scale fishers are reflected in any wider outcome.

Now is the time to raise your voice to ensure that your country takes a position in the talks that protects small-scale fishers lives and livelihoods. Organisations all over the world are trying to make a comprehensive outcome the best it can be and that means holding those most responsible for overfishing accountable while not making developing countries and their communities bear the burden of the deal. Sustainable fishing is possible and that starts with supporting small-scale fishers and conservation measures that aren't held to ransom in the WTO.



Pacific Network on Globalisation
9 Marion St, Suva
Fiji Islands
www.tradepac.org