

# WTO negotiations on fishery subsidies

## SUMMARY

Accounting for 17 % of the global average per capita intake of animal protein, fisheries products support many people's livelihoods and make a significant contribution to food security. However, more than a third of world stocks are fished at biologically unsustainable levels. Economic losses from the depletion of fish stocks are estimated at US\$83 billion. A reduction in fishing capacity and effort would contribute to the recovery of stocks, yet many governments of fishing countries continue to support the sector with harmful fishery subsidies. Subsidies that directly increase fishing capacity and may lead to overfishing are estimated at about US\$22 billion worldwide.

Although there are no specific global rules on fisheries subsidies, they are currently governed by the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures. However, subsidy rules in this agreement are geared towards trade distortion as opposed to the adverse effects on the environment. While new fisheries subsidies disciplines have been part of WTO-level negotiations since 2001, the negotiating mandate was rewritten in 2005 with the aim of eliminating subsidies that contribute to overcapacity and overfishing, while also taking into account special and differential treatment for developing countries. Negotiations stalled in 2011, but were revived thanks to the 2015 UN sustainable development goals, whereby government leaders committed to ban harmful fisheries subsidies by 2020, including those that contribute to illegal, unreported and unregulated fishing.

The negotiations have been very difficult because they bring together two very different worlds, namely fisheries management and the WTO rules system. More specifically, not all members consider certain subsidies to be equally harmful, as views and practices in fisheries management vary widely. On 24 November 2021, a draft agreement was submitted to ministers ahead of the upcoming 12th Ministerial Conference (MC12). The text includes a ban on subsidies contributing to overcapacity and overfishing, such as support for the construction of vessels and for operational costs. A number of exemptions would apply, e.g. for certain developing countries and, important for the EU, where fish stocks are exploited at biologically sustainable levels. MC12, which was set to start on 30 November 2021 and had already been postponed from 2020, was put off again because of renewed travel restrictions. New dates have yet to be set.



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## Background

Fishery products are an important source of food for human consumption and support the livelihoods of many coastal communities. According to a 2020 report by the UN Food and Agriculture Organization (FAO) on [The state of world fisheries and aquaculture](#), roughly 39 million people are engaged in the fisheries primary sector, most of whom work in developing countries in small-scale fisheries. Globally, fish provides 17 % of the average per capita intake of animal proteins, and up to [50%](#) in certain developing countries. However, fisheries are a classic example of the tragedy of the commons, whereby a single actor has no incentive to moderate their behaviour. As a result of increased fishing activities, the number of **overfished stocks** has tripled in half a century. The FAO report estimates that the fraction of stocks fished at unsustainable levels grew from 10 % in 1974 to 34.2 % in 2017. This increasing trend not only causes negative impacts on fish stocks, biodiversity and ecosystem functioning, it also harms the contribution of fisheries to food security and the socio-economic situation of many coastal communities.

A 2017 [World Bank](#) report entitled [The Sunken Billions Revisited](#) estimated **economic losses** from overfishing at **US\$83 billion**. The long-term decline in fish stocks has led to a tremendous decrease in fisheries productivity, evidenced by the fact that catches are no longer expanding despite a rapid increase in the global fishing effort. Restoring overexploited stocks would increase the economic benefits by a factor of almost 30, from US\$3 billion to US\$86 billion. Reducing the global fishing effort by 5 % a year for a 10-year period would allow this level to be reached in about 30 years.

While there is no single cause for the overfishing problem, it is clear that large-scale government support for the fishing industry contributes by subsidising overcapacity and eventually overfishing. Several studies have indicated that the fishing industry is a **subsidy-intensive sector**, with the subsidy amount estimated roughly at around [30-40%](#) of the global value of fishery catches.

Fishery products are also actively exported and imported between nations. In 2018, almost 38 % of all fish was traded internationally. Historically, fisheries subsidies have been a topic in international trade negotiations. [A working party on problems of trade in fisheries](#), set up within the framework of the General Agreement on Tariffs and Trade (GATT),<sup>1</sup> [noted](#) in 1985 the situation of overfishing of many stocks that had emerged since the mid-1970s. However, when it came to fisheries subsidies, the working party focused on the **impact on trade**. Subsequent negotiations in GATT were [unsuccessful](#) and fisheries subsidies were eventually covered by the umbrella agreement on subsidies and countervailing measures (ASCM), covering all goods except agricultural products. Under the provisions of the ASCM, fishery subsidies are **actionable**, meaning they can be subjected to measures (e.g. countervailing duties) when they adversely affect the interests of other countries. However, these provisions are aimed at trade distortion and not at environmental effects.

## Fishery subsidies

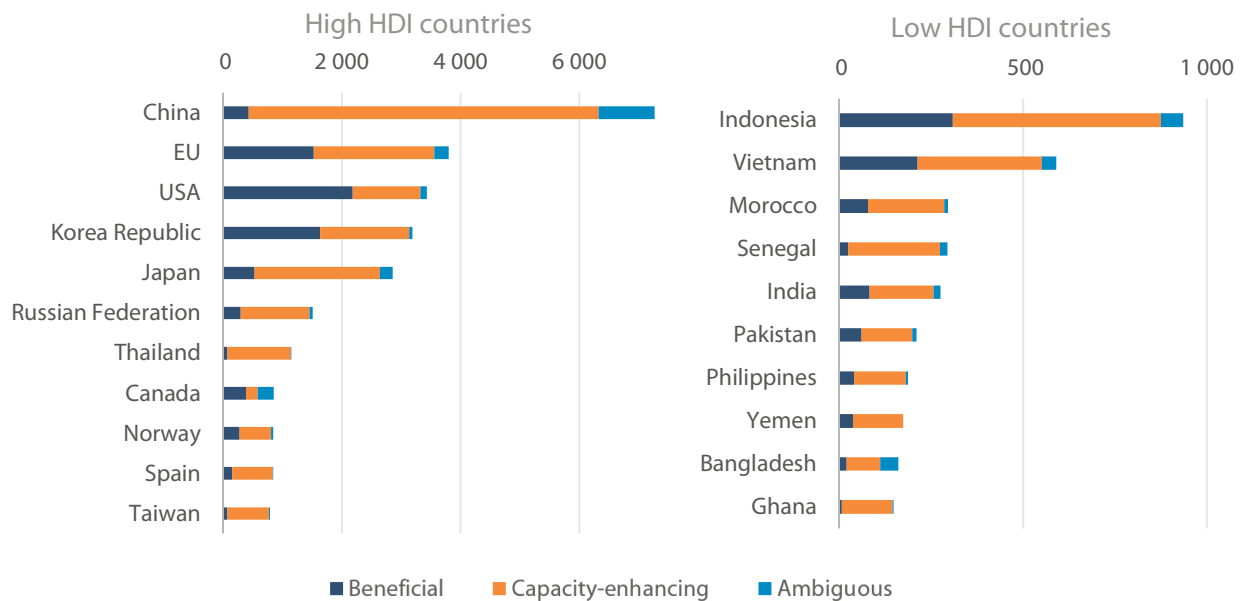
### Global overview

Not all fishing subsidies are considered harmful to the environment. A November 2019 [study](#) classified fisheries subsidies into three groups: 'capacity-enhancing', 'beneficial' and 'ambiguous'. **Beneficial subsidies** can be considered investments to promote fishery resource conservation and management. Examples of **capacity-enhancing subsidies** are support for certain investments in vessels and port infrastructure, fees to access third country waters, and fuel subsidies. **Ambiguous subsidies** can be either beneficial or capacity-enhancing depending on how they are implemented (e.g. support for artisanal fishing communities, support for cessation of fishing activities).

The study estimated global fisheries subsidies at **US\$35.4 billion** in 2018, of which capacity-enhancing subsidies totalled **US\$22.2 billion**. The top five subsidising political entities (China, the EU, the United States (US), the Republic of Korea and Japan) represent 58 % of the total. Since the value of support is highly dependent on the country's level of economic development, the study

classified countries into two groups according to the UN Human Development Index (HDI). The figure below shows the 10 largest subsidising countries per group, whereby the EU was added as an extra entity in the high HDI group, and including a breakdown into the three subsidising categories. China is by far the country with the most subsidies in absolute terms, followed by the EU and the US. Indonesia has the highest share in the low HDI countries and would rank between Thailand and Canada in an overall list. Low HDI countries represent only 13 % of the global total. The share of capacity-enhancing subsidies in each country is larger than other categories, except for countries in North America and Oceania, which provide greater beneficial subsidies.

Figure 1 – Fisheries subsidies by country (EU included) and category (2018, in US\$ million)



Data source: 'Updated Estimates and Analysis of Global Fisheries Subsidies', Marine Policy, Vol. 109 (11/2019).

## Subsidies in the EU

The EU has **exclusive competence** for the conservation of its marine fisheries resources, and manages them under the common fisheries policy (CFP). The CFP has a dedicated financial instrument – the **European Maritime, Fisheries and Aquaculture Fund (EMFAF)** – with a budget of approximately **€6 billion** for the 2021-2027 programming period. The vast majority of the fund, about 87 %, falls under shared management with the Member States. This means that operational programmes are defined at national level and then have to be approved by the European Commission, in accordance with the [EMFAF Regulation](#) rules. The distribution of the EMFAF budget under shared management is allocated among Member States according to the size of their fishery and aquaculture sectors. The four largest beneficiaries receive about half of the total: Spain (21 %), France (11 %), Italy (10 %) and Poland (10 %). EU support for EMFAF measures is complemented by national funding. For example, in the previous programming period (2014 to 2020), Member States [increased](#) the EU budget allocated by an average of 40 % through national co-financing.

When EU financing for the fisheries sector was first introduced in the 1970s, it was strongly focused on enhancing production, namely through structural support (e.g. investments in fishing fleets) and marketing of fishery products (e.g. support for producer organisations). Over time, sectoral support and conservation policies have gradually become more coherent. The share of the budget spent on fleet support has decreased and funding has become available in an increasing number of areas, for example for control measures, environmental aspects, marine knowledge and diversification of activities. The recently adopted EMFAF contains still a number of **fleet support measures** for vessels up to 24 metres in length, such as the first purchase of a second-hand vessel by young fishermen and vessel engine modernisation. However, strict conditions apply to prevent such investments

from contributing to overcapacity or overfishing. They include, inter alia, that the vessel must belong to a fleet segment that is in balance with the fishing opportunities available to that segment and that the new or modernised engine must not have more power than that of the engine being replaced. The EMFAF also allows **support for temporary or permanent cessation** of fishing activities under certain conditions. However, a national ceiling has been set for both fleet and cessation support measures together, namely the higher of the following two thresholds: **€6 million** or **15 %** of the budget allocated to the Member State. Other types of capacity-enhancing operation are explicitly prohibited, such as the acquisition of equipment that increases the ability of a fishing vessel to find fish or the transfer or reflagging of fishing vessels to third countries. Part of the EMFAF budget is aimed at support for aquaculture and inland fisheries.

In addition to the EMFAF, the EU has a separate budget for financing the CFP's external dimension that amounts to approximately **€1 billion** for the 2021-2027 period. This budget is used for contributions to the multilateral organisations managing fishing activities on the high seas ([RFMOs](#)) and for **payments to third countries** under sustainable fisheries partnership agreements ([SFPAs](#)). In exchange for fishing rights, the EU makes financial contributions to its SFPa partners, including payments for access to their waters and development aid to local fisheries sectors. The most important agreement is with Mauritania, with an annual EU contribution of €62 million (of which €58 million for access rights and €4 million for sectoral support). In [total](#), about 10 % of EU catches are taken from RFMO areas and a further 10 % from SFPAs.

Another important support measure for the EU fisheries sector are **fuel tax exemptions**. Fuel prices have a major impact on profitability. In [2018](#), the EU fleet consumed 2.3 billion litres of fuel, with the cost estimated at €1 852 million, representing 16.9 % of the operating costs. According to the **Energy Taxation Directive (ETD)**, Member States are exempt from taxation on 'energy products supplied for use as fuel for the purposes of navigation within Community waters (including fishing)'. The subsidising value of the fuel tax exemption depends on the fuel duties applied by Member States and on the level of the (fluctuating) fuel prices. A [2013 European Parliament study](#) estimated the average foregone revenue for the 2002-2011 period at about **€1 billion** per year. However, this amount should be considered a maximum, as abolishing fuel tax exemptions would likely lead to lower consumption, as has been observed during fuel price increases, while there is also increased investment in energy efficiency. The ETD is currently [under revision](#) and the Commission has [proposed](#) to end the tax exemption. Instead, the Commission proposes to introduce a small nominal tax for shipping within EU waters, which would contribute to fairer distribution of environmental costs in the transport sector. For extra-EU navigation, given the possibility of tax-free [fuel tankering](#) outside EU jurisdictions, Member States may still decide not to apply the tax.

Furthermore, State aid at national level is possible under the **de minimis** principle. Although in principle prohibited, State aid schemes can be allowed if they are below certain thresholds having no effect on competition or trade. For the fisheries and aquaculture sector, a specific [De Minimis Regulation](#) sets the threshold per company at **€30 000** over three consecutive tax years, together with a national ceiling for the same period, amounting to €700 million for all EU-27 countries combined.<sup>2</sup> State aid may not be used for a list of ineligible operations, set out in its Article 1 (e.g. to buy fishing vessels or engines, or to increase fishing capacity or the ability to find fish), but it can be used to pay certain costs sustaining fishing activity, such as aid for temporary cessation.

## Negotiation process

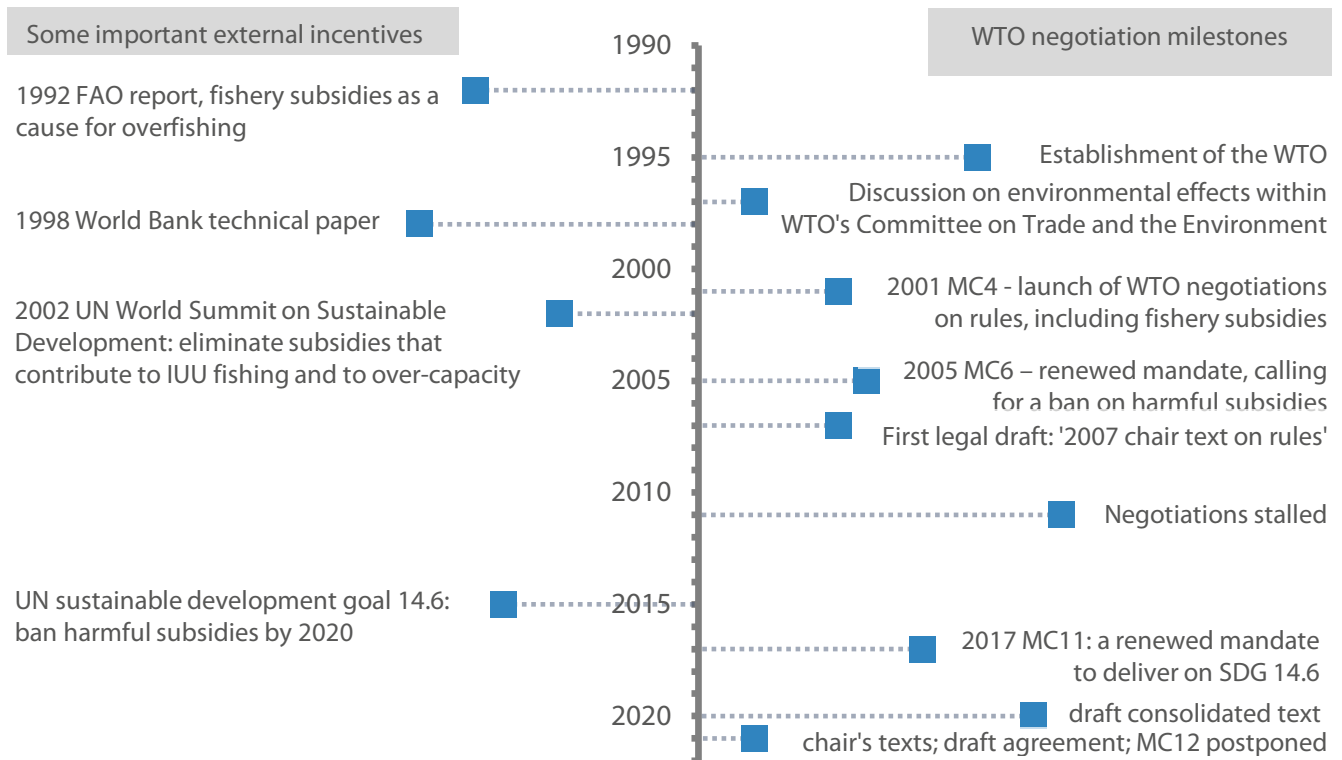
### Launch of negotiations

In the 1990s, public awareness of the need to regulate fisheries subsidies increased. It was no longer considered primarily a matter of greater fairness in international trade, but now also as a matter of **protecting natural resources** from depletion. A [1992 FAO report](#) drew attention to the sheer scale of subsidies in the fisheries sector and the fact that removing them could be largely off-set by increased revenues through the more effective management of fish stocks. In the years that

followed, fishery subsidies have been the topic of a number of international studies and reports. A [1998 technical paper](#) from the World Bank noted that 'fisheries management effectiveness is being undermined by the very subsidies that are provided to maintain fisheries sector income'.

After the WTO was set up in 1995, the potential environmental effects of fishery subsidies were discussed within its Committee on Trade and the Environment (1997-1999). However, from the outset, Members had **widely differing opinions** on the role of fisheries subsidies as a cause of overfishing. [For example](#), Norway and Japan noted the main cause of overexploitation as the lack of sustainable management of fisheries resources. Canada and New Zealand stressed subsidies' negative impacts. According to New Zealand, subsidies encouraged the use of resources above normal economic rates of exploitation and led to overfishing, placing downward pressures on world seafood prices and creating unfair competition for developing countries. The EU noted that subsidies should be differentiated according to whether or not they had distortive effects.

Figure 2 – WTO negotiations on fishery subsidies: A timeline



The initial discussions and a global recognition of the need for WTO to act on fisheries subsidies led to their inclusion in a new round of WTO trade negotiations, the [Doha round of negotiations](#). More specifically, at the [Fourth Ministerial Conference](#) (MC4) in Doha in November 2001, ministers agreed to start negotiations on 'anti-dumping and subsidies rules' (in short [negotiations on rules](#)), including on fishery subsidies. The mandate of the 'negotiating group on rules', outlined in the [ministerial declaration](#), included the aim 'to **clarify and improve** WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries'.

The vague mandate led to a discussion about the **need for and scope** of specific rules on fisheries subsidies, with members taking similar positions as before. [Eight proponents](#) of new WTO disciplines (Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the US) highlighted the large scale of fisheries subsidies and the need to address their harmful effects. [Japan](#) and [Republic of Korea](#) became the main opponents of new strict disciplines, pointing to inadequate fisheries management as the main cause of stock depletion, considering it a responsibility for the coastal states as 90-95 % of the catch is taken from national waters. Other countries, notably [China](#), noted the mandate takes into account the importance of fisheries to **developing countries** and that special and differential treatment ([SDT](#)) should be accorded to them. Meanwhile, a growing

share of the international community favoured effective new fisheries subsidies rules. The [2002 UN World Summit on Sustainable Development](#) called for the elimination of subsidies that 'contribute to illegal, unreported and unregulated fishing and to over-capacity'.

Although no consensus could be reached, a majority favoured **classifying** subsidies according to their **environmental** effects. The [US](#) stated the goal should be 'to provide better disciplines for government programs that promote overcapacity and overfishing'. The [EU](#) stated that **capacity-enhancing subsidies** should be banned, while aid for cessation of fishing activities or for the modernisation of vessels that do not increase 'the vessel's ability to catch fish' should be allowed, and [proposed](#) to include such examples of **red** (prohibited) and **green** (permitted) fishing subsidies in the ASCM. [New Zealand](#) noted that overfishing was a product of both fishing capacity and activity ('fishing effort') and therefore suggested focusing on support for **operating costs** as well. Some subsequent contributions suggested defining lists of red and green subsidies, differing in scope and on whether to use a **top-down** or **bottom-up** approach. For example, [Argentina, Chile, Ecuador, New Zealand, Peru and the Philippines](#) preferred a broad ban with exceptions (top-down), while [Japan, the Republic of Korea and Taiwan](#) preferred to base prohibition on existing programmes (bottom-up). Participants also [differed](#) on SDT scope and whether to link it to the scale of a country's fisheries sector.

## A first legal text but no convergence

In December 2005, four years after the launch of the negotiations, [MC6 in Hong Kong](#) directed the negotiation group to intensify and accelerate the process, while specifying the mandate in more detail. On fishery subsidies, the [ministerial declaration](#) in its [Annex D](#) noted that there was broad agreement on strengthening the subsidy disciplines in the fisheries sector, including by eliminating certain forms of fisheries subsidies that contribute to **overcapacity and overfishing**, and that **SDT** for developing and least-developed Members should be included.

The Hong Kong declaration thus shifted the focus to a **ban** on subsidies that contribute to overcapacity and overfishing. The more detailed mandate also led the negotiations into a **text-based phase** with Members proposing concrete draft legal amendments to the ASCM. The disagreement regarding the use of a bottom-up or a top-down approach remained. The '[Friends of Fish](#)' coalition [supported](#) a wide ban with limited exceptions, whereas [Japan and the Republic of Korea](#), but also [the EU](#), proposed a more narrowly defined list of prohibited subsidies.<sup>3</sup> Other submissions focused on specific issues, such as subsidies addressing [social security concerns](#) and the limits and conditionality for [SDT](#).

In November 2007, the chair of the negotiating group submitted a first draft consolidated text, the '[chair text on rules](#)'. Provisions on fishery subsidies would be included in a new annex to the ASCM.

- Article I listed specific **prohibited subsidies** (i.e. based on the bottom-up approach, albeit with a broad scope), including subsidies for the construction, modification or repair of vessels, support for operating costs (such as fuel and licence fees), price and income support, transfers of vessels, certain subsidies relating to fisheries infrastructure and processing as well as subsidies for illegal, unreported and unregulated (IUU) fishing.
- Article II defined **the exceptions** to the above. For example, subsidies for modernising vessels would be prohibited, except when for improving crew safety and providing fishing capacity is not increased.
- Article III covered **SDT** for developing Members, with a full exemption on the prohibited subsidies for least-developed countries ([LDCs](#)) and conditional exemptions for other developing countries.
- Other articles dealt with a **general discipline** (providing a remedy when a Member causes adverse effects through the use of a grant), with the obligation of a **fisheries management** system, reporting and monitoring, transitional provisions and dispute settlement.
- **Sustainability criteria** were included in several articles, as well as a review role for the FAO.

While the chair text marked a milestone in the negotiations, it failed to win a consensus. In May 2008, the chair published a [working document](#) listing differences in opinion. Some were fundamental, e.g. on using a top-down or bottom-up approach, while other focused on specific aspects, such as whether or not to ban subsidies on operating costs. On **fisheries management** as a condition for subsidisation, developing countries (e.g. [India and Indonesia](#)) strongly opposed such rules for SDT.

Aware of the fact that the draft text had to be revised owing to the continuing differences of opinion, the chair asked the participants a series of [key questions](#) at the end of 2008, with the aim of clarifying their positions on various aspects. In March 2010, the chairman [reported](#) that, after the point-by-point discussion, differences of opinion remained very large. In the following months, some members continued to support the chair text, with some adjustments (e.g. the [US](#) and [Australia](#)), while other members suggested changing the text's structure and concept (e.g. the [Republic of Korea](#) and [Japan](#)). New proposals also came in, such as on [SDT](#) and [fuel subsidies](#).

In an [April 2011 report](#), a new chair noted that many of the proposals submitted by members were not 'convergence proposals' and that it was therefore not possible to table a new revised text. Instead, the report listed the differences in opinion on every point of the 2007 chair text, but also on the new ideas. The report closed the failed attempt to complete negotiations in 2011, after which they remained in a stalemate, partly due to a decline in interest in the Doha Round.

## A new mandate to deliver on SDG 14.6

In December 2013, the successful [MC9 in Bali](#) brought hope that the negotiations could be revived. It was decided that a [work programme](#) would address the issues remaining from the Doha round. In a [statement](#), the 'Friends of Fish' coalition expressed its wish to include negotiations on fishery subsidies in the work programme.

In [March 2014](#), the chair of the rules negotiating group noted that very few delegations advocated picking up from spring 2011, when the group had last met to discuss substance. While new contributions from delegates presented elements for inclusion in the post-Bali work programme, fisheries subsidies received renewed attention through the UN's sustainable development goals ([SDGs](#)) adopted by government leaders in September 2015. More specifically, [SDG 14](#) focuses on **life under water** with 10 specific objectives, the [sixth](#) of which is aimed at eliminating harmful subsidies **by 2020** (see box). As in the Hong Kong mandate, the need for SDT is stated. The explicit objective of banning subsidies that contribute to IUU fishing is new.

The December 2015 [ministerial declaration](#) from [MC10 in Nairobi](#) brought the focus back to the remaining Doha issues, including rules, but without explicit reference to fisheries subsidies. However, in a [ministerial statement](#), 28 members said they would seek to reinvigorate work in the WTO aimed at achieving ambitious and effective disciplines on fisheries subsidies.

The discussions in the rules negotiation group then shifted on how to **achieve SDG target 14.6**, with initial contributions focused on the scope and questions to be posed on how to achieve the goal. An October 2016 contribution from [the EU](#) expressed the need to engage in text-based negotiation. It included a concrete proposal, with a limited list of prohibited subsidies. With the initiative, the EU took a leadership role by being the first WTO member to present a textual proposal following the establishment of SDG 14.6. Other contributions submitted throughout 2016 and 2017 had another focus, e.g. a much wider prohibition scope in a contribution from [Iceland, New Zealand and Pakistan](#) or a more extensive chapter on SDT in a contribution from [Indonesia](#). A submission from [Guyana](#) on behalf of the African,

### UN SDG 14 'life below water' on fishery subsidies

*By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated 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 World Trade Organization fisheries subsidies negotiation.*

Caribbean and Pacific Group of States pointed to the LDC goal expressed in [SDG 14.7](#), namely to increase their economic benefits by 2030, through the sustainable use of marine resources.<sup>4</sup>

In July 2017, the chair summed up the [seven textual proposals](#) received by then in table format, covering aspects in all areas (scope, definitions, prohibitions, SDT, transparency and notification, transitional provisions, etc.). Intensified negotiations led to first versions of a [working text](#) at the end of 2017. Contrary to the 2007 chair text, the many differences of view among Members are included through a range of options and brackets used in the text. The text is also presented as a stand-alone document, regardless of whether it would be an annex to the ASCM or a stand-alone agreement.

The progress made in the working group paved the way for a renewed [mandate](#) at [MC11 in Buenos Aires](#) in December 2017. The [ministerial decision](#) included the target **of delivering on SDG 14.6** by the end of 2019 and a commitment to **improve reporting** on existing fisheries subsidies.

In April 2018, the working group on rules [agreed](#) on a work programme for the next three months, organised around thematic clusters. The next programme for [autumn 2018](#) included brainstorming for solutions in 'incubator groups' (member subgroups), text-based discussions, bilateral meetings and technical sessions. As a result, the [working text](#) was streamlined into a single document.

In 2019, negotiations [intensified](#) and included [monthly](#) week-long meetings in the first half of the year, organised around four thematic clusters: subsidies for IUU fishing; subsidies for overfished stocks; subsidies contributing to overcapacity and overfishing; and cross-cutting issues including SDT for developing and LDC members, dispute settlement, institutional issues, and notification and transparency. During the same period, contributions with new ideas were submitted, for example a contribution from [Australia and the US](#) on introducing a member-specific subsidy cap, to allow for subsidies to small-scale fisheries. In a contribution, [India](#) proposed, as part of SDT, to exempt fishing activities within the exclusive economic zones of developing countries from the ban on subsidies contributing to overfishing and overcapacity.

Working papers addressing the four thematic clusters were presented in July 2019, after which monthly sessions were planned for September to December 2019. Other new proposals came in, such as a contribution from [Argentina, Australia, New Zealand, the US and Uruguay](#) to prohibit subsidies to vessels not flying the subsidising member's flag.

On 8 November 2019, the group elected the Colombian Ambassador to the WTO, Santiago Wills, as the new chair. In a [report](#), the chair noted it would not be possible to conclude in 2019, but that members were committed to finalising the negotiations by MC12, originally planned for June 2020 in Kazakhstan. To this end, new monthly sessions were planned for the period from January to May 2020, with the facilitators of the subgroups and the chair working [continuously](#). In early March 2020, India [revised](#) its previous proposal on SDT, stating that developing countries with a per capita gross national income of more than US\$5 000, a share of more than 2 % of the global catch, engagement in distant-water fishing, and a share of agriculture, forestry and fisheries below 10 % of its gross domestic product should not be subject to SDT, which would exclude [China](#), in particular.

The pandemic led to the cancellation of physical meetings and the MC12 was postponed. As noted by a chair [report](#), adaptation to virtual meetings took time, particularly for plenary meetings. Nevertheless, negotiations continued and in June 2020 the chair presented a first [draft consolidated text](#), not publicly disclosed, based on the work done by the facilitators and on members' proposals. Monthly sessions [resumed](#) from September to November 2020, generating new versions of the text in [November](#) and [December](#) 2020, whereby many important placeholders were replaced by text. However, insufficient progress, coupled with renewed pandemic mitigation measures, made it impossible to reach an agreement by the end of 2020, the deadline set by SDG target 14.6.

Monthly [week-long cluster](#) meetings continued in 2021. Following the discussions, the draft text was further revised, leading to a new draft in [May 2021](#). This version was published as the [\(draft consolidated\) chair text](#). An [explanatory note](#) was also published, in which the chair outlines the changes to the previous text. With the new text, the chair [aimed](#) to bring members closer to an



agreement ahead of a virtual ministerial level meeting on 15 July 2021 focused on fisheries subsidies. To this end, the chair made an attempt at possible middle-ground language and/or clear choices in some areas where views remained divergent. On SDT, it contained India's criteria-based exemption as well as another alternative combining elements from a contribution from [Argentina, Australia, the US and Uruguay](#) (i.e. SDT provisions apply when a member's share is maximum 0.7 % of the global catch) and from a contribution from [Brazil](#) (i.e. an annual subsidy cap of US\$25 million). Further [intensive discussions](#) took place since the circulation of the May 2021 chair text. This resulted in the [publication](#) of a revised [chair text](#), dated 30 June 2021, which served as a basis for discussion at the [virtual ministerial level meeting](#) on 15 July 2021. Again, the new chair text was published along with an extensive [explanatory note](#), explaining in detail the evolution from the previous version. At the virtual summit, members [broadly supported](#) the text as a basis for concluding the negotiations, but pointed to issues that remained to be resolved from their perspective. The trade ministers then mandated their negotiators to provide a clean, or as clean as possible, draft text before [MC12](#) – scheduled to start on 30 November 2021.

Negotiations in the following months resulted in a second revision of the chair text, [published](#) on 8 November 2021. As has become a practice, the [revised draft text](#) was accompanied by an [explanatory note](#) outlining the changes. The text also incorporated a new contribution from [US](#) on the use of forced labour (often associated with distant water IUU fishing activities).

Finally, on 24 November 2021, the chair of the negotiation group [submitted](#) a draft agreement to the ministers, with 26 options in brackets still to be decided. In his explanatory note, the chair noted that all provisions in the draft agreement remained open for discussion if ministers so wished. However, the possibility of closing the deal was once again hampered by the pandemic. On 26 November 2021, the WTO [announced](#) that MC12 would be postponed due to renewed travel restrictions and quarantine requirements in Switzerland. The new dates have yet to be decided.

## Main sticking points

The most challenging topic is how to approach [SDT](#), i.e. provisions that give special rights to **developing countries** (including LDCs). The [LDCs](#) are based on a clearly defined UN [list](#), while the broader list of developing members that are not LDCs is based on self-declaration. While there was common recognition of the need to support artisanal fishing in developing countries, there was concern about SDT in the new disciplines for those developing countries that already fish on a large industrial scale. In fact, the three largest fishing countries are now all developing countries, together accounting for more than 30 % of [global marine catches](#) in 2018: China (15 %), Peru (8 %) and Indonesia (8 %). Particularly for China, both the largest subsidising and largest fishing nation, SDT has become increasingly difficult to justify. One item where views are very divergent is the length of the transition period for phasing out certain subsidies in developing countries. Some think [five years](#) is already too long, others have asked for a longer period, India even for [25 years](#).

The lack of **sustainable fisheries management** has named by some developed countries since the start of the negotiations as the main cause of overexploitation. Therefore, exemptions from the ban were requested when measures are in place to keep stocks at a biologically sustainable level. Such a sustainability-based exemption was [criticised](#) by a number of developing countries, as it would disproportionately benefit large subsidisers such as Japan, the Republic of Korea and the EU.

Another long-standing contentious issue is **fuel subsidies**. According to the above-mentioned [study](#), fuel subsidies (including fuel tax exemptions) represent the largest subsidy type at 22 % of total fisheries subsidies. Some members argue that fuel subsidies, including tax exemptions on fuel, are the most harmful and thus, whether *specific* or not, should be subject to the disciplines. Other members do not find it appropriate to subject generally available (i.e. *non-specific*) fuel tax relief schemes to the disciplines, as in fact they are not considered subsidies. During the negotiations, the European Commission fell into the latter category, as a general prohibition on tax relief schemes would impede a level playing field for its distant fleet and incentivise refuelling on the high seas.

Instead, the Commission [aimed to address](#) fuel subsidy schemes (i.e. *specific* subsidies for the purchase of fuel) that lower the final price below the world market price.

## The draft agreement

According to the [draft text](#), submitted by the chair of the negotiating group to the ministers on 24 November 2021, the new disciplines on fisheries subsidies would be a stand-alone agreement rather than an annex to the ASCM, the other option previously considered.

As regards the structure of the text, the draft agreement contains 11 articles:

- Articles 1 and 2 define the scope and definitions.
- Articles 3, 4 and 5 contain the core of the agreement, namely the prohibition on subsidies contributing to IUU fishing, on subsidies regarding overfished stocks and on subsidies concerning overcapacity and overfishing, including SDT for developing countries.
- Articles 6 to 11 cover specific provisions for LDCs, technical assistance and capacity building, notification and transparency, institutional arrangements (including the establishment of a committee), dispute settlement and final provisions.

Regarding the **scope** of the agreement, article 1.1 states that it covers all subsidies that are *specific* to marine fisheries. It refers to two important footnotes, namely that aquaculture and inland fishing are excluded, as are government-to-government payments under **fisheries access agreements**. This last point is particularly important for the EU to continue its SFPAs.

Furthermore, article 1.2, specifies that the agreement also applies to **fuel subsidies** that are generally available (i.e. *non-specific*), which may implicitly include fuel tax exemptions. Considering the broad spectrum of views, the chair kept article 1.2 still in brackets to indicate a pending decision on whether to retain the text or not. In the [explanatory note](#), the chair points out that *specific* fuel subsidies are included through article 1.1, while the inclusion of *non-specific* fuel subsidies via article 1.2 currently implies a **notification requirement** as an acceptable compromise (via article 8.1 bis, also still in brackets). This would acknowledge the harmfulness of non-specific fuel subsidies without subjecting them to the substantive disciplines in articles 3, 4 and 5. Members favouring the notification solution noted that the information collected on such subsidies would be very helpful in informing the first in-depth review of the operation of the agreement provided for in article 9.4.

On **subsidies contributing to IUU fishing**, article 3 specifies that no vessel or operator may receive subsidies when it is engaged in IUU fishing and that each Member shall have laws and/or procedures in place to ensure this. For triggering the prohibition, the determination of being engaged in IUU fishing can be made by the **coastal state** (for activities its waters), by the **flag state** (for activities by vessels flying its flag) or by a relevant **RFMO** (for fishing activities under their competence). Important to note is that such an affirmative determination by any of the three entities serves as a trigger for the subsidy prohibition. There is also a potential role for the **port state**: when a member has clear grounds to believe that a vessel in one of its ports is engaged in IUU fishing, it may inform the subsidising member, which should then take it into account. Article 3 also covers a *peace clause* for two years for developing members, during which the disciplines apply but would not be subject to dispute settlement in case of low income, resource-poor and livelihood fisheries up to 12 nautical miles from the baseline. The agreement thus recognises the need to eliminate subsidies completely for IUU fishing, while also recognising the challenge of implementing these disciplines for artisanal fisheries in developing countries. However, the period of two years and the limit of 12 nautical miles remain in brackets, as does the peace clause in its entirety.

Article 4 covers the ban on subsidies regarding an **overfished stock**, with the exception of subsidies that are implemented to promote the rebuilding of the stock. The recognition of overfishing is to be determined by the relevant coastal state or RFMO, based on the best available scientific evidence. The article contains a *peace clause* identical to that in article 3 (also still in brackets).

Regarding the prohibition on subsidies contributing to **overcapacity and overfishing**, an illustrative list of such subsidies is given in article 5.1. It includes

- subsidies for the construction, acquisition and modernisation of vessels;
- subsidies for the purchase of machines and equipment for vessels;
- subsidies for the purchase/cost of fuel, ice, or bait;
- subsidies for costs of personnel, social charges, or insurance;
- income and price support;
- subsidies covering operating losses.

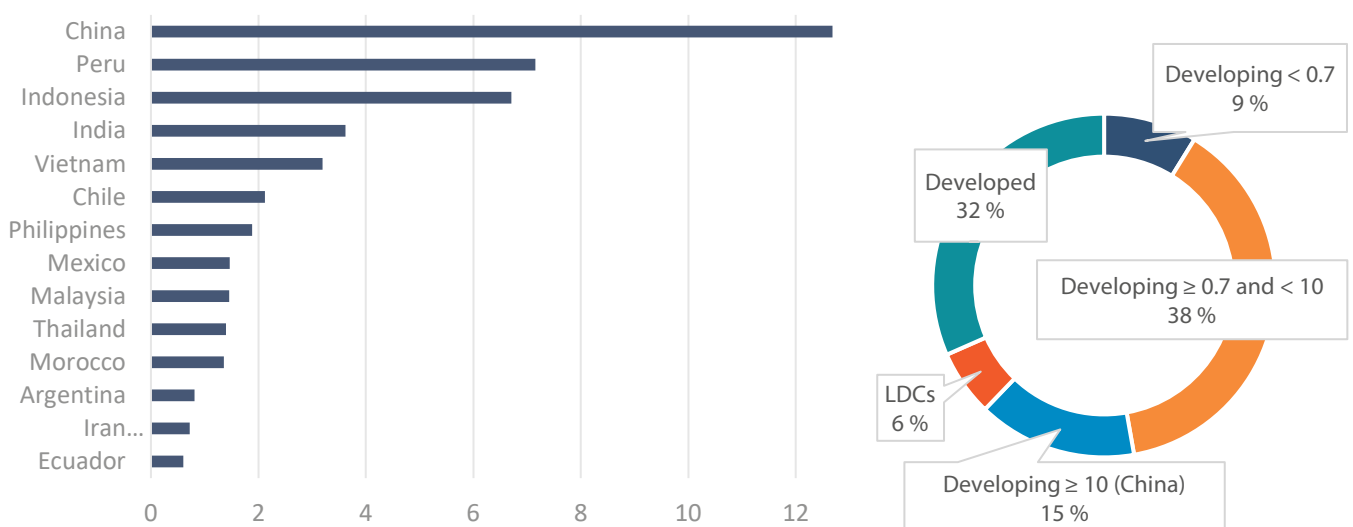
It is important to note that article 5.1 is qualified by article 5.1.1, which states that such subsidies are permitted if the subsidising member demonstrates that measures are being taken to maintain fish stocks at **biologically sustainable levels**. Although this provision is controversial and considered by some to be a sort of reverse SDT for developed countries, the chair justifies it by arguing that the main issue is overcapacity and overfishing and each subsidy must therefore be viewed in the specific context in which it is provided. According to the European Commission, this provision allows compatibility with the EMFAF as the CFP ensures the sustainable management of fishery resources.

Article 5.4 covers **SDT for developing countries** (excluding LDC) relating to Article 5.1. It states that:

- members catching less than 0.7 % of the global total are exempt from the ban;
- low income, resource-poor and livelihood fishing within 12 nautical miles are also exempt;
- in other cases, a transition period of 'X' years applies (whereby 'X' has not yet been determined).

However, these SDT provisions do not apply to Members catching 10 % or more of the global total (this exception currently applies only to China). This particular provision, as well as the figure of 0.7 % and the 12 nautical miles, remain in brackets, as well as the entire article 5.4. Just as in the case of the above-mentioned peace clauses, it reflects the fact that the discussions on STD provisions for developing countries (excluding LDCs) are ongoing. On LDCs, article 6.1 states that the prohibition under article 5.1 shall not apply to them. Although this straightforward exemption is generally accepted, a transition period of 'X' years for 'graduating' LDCs (in article 6.2) is still in brackets.

Figure 3 – Developing country catches with a global share greater than or equal to 0.7 % (left) (2018, million tonnes) and their combined share of the global catch (right)



Data source: [FAO global capture production statistics \(online query\)](#), [UN list of LDCs](#).

Figure 3 shows the production of the different categories of members according to the SDT provisions relating to article 5.1. Developing countries with a global share of 0.7 % or more represent more than half of the global catch (53 %, including China with a global share of 15 %).

The draft text also provides for the establishment of a fisheries subsidies committee responsible for examining the information to be provided by members and for reviewing the agreement. It would need to maintain contact with the FAO and other organisations active in fisheries management.

Although no new date has been set for MC12, the delegations have been asked to continue negotiating and close as many gaps as possible. The WTO Director-General [called](#) on members to reach an agreement by the end of February. Once the MC is reconvened, at the earliest in March 2022, it could decide on any outstanding issues. If the negotiators can prepare a clean text, or with at most one outstanding issue to be resolved, the ministers might even finalise or endorse an outcome remotely. The 164 trade ministers will try to conclude the agreement by consensus.<sup>5</sup> The agreement would then be submitted to the members, in the form of an amendment adding the new agreement to [Annex 1A](#) of the WTO agreement (which covers multilateral agreements on trade in goods). The members would then have to ratify the text for it to enter into force. In accordance with its exclusive competence, the EU ratifies on behalf of its Member States. As the negotiating group chair [noted](#), it could take many months, if not years, for a new WTO instrument to enter into force, but members may opt for provisional application in the meantime.

The importance of concluding a deal cannot be understated. 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.

## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Scholaert F., [European Maritime, Fisheries and Aquaculture Fund](#), EPRS, European Parliament, September 2021.

## ENDNOTES

- <sup>1</sup> GATT was signed in 1947 with a view to making international trade easier. In 1995, it was absorbed in the WTO.
- <sup>2</sup> In response to the coronavirus crisis, the ceiling per company was temporarily [increased](#) to €120 000 in 2020.
- <sup>3</sup> [Friends of fish](#) is an informal coalition seeking to significantly reduce fisheries subsidies. It includes Argentina, Australia, Chile, Colombia, Ecuador, Iceland, New Zealand, Norway, Pakistan, Peru and the United States, although from time to time other WTO Members also identify themselves as 'friends of fish' or take similar positions.
- <sup>4</sup> [SDG 14.7](#): 'By 2030, increase the economic benefits to small island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism'.
- <sup>5</sup> If no consensus is reached, then after a certain period of time this [decision](#) can be taken by a two-thirds majority vote (and ratification by at least two-thirds of the members). This procedure was followed for the adoption of the [Trade Facilitation Agreement](#).

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