

WTO agreement on fisheries 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 help stocks recover, yet many governments of fishing countries continue to support the sector with harmful fisheries subsidies. Such subsidies, which directly increase fishing capacity and may lead to overfishing, were estimated to be worth about US\$22 billion worldwide in 2018.

Fisheries subsidies have been governed by the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures since 1995. However, these rules focus on tackling trade distortion rather than adverse environmental effects. New disciplines for fisheries subsidies have therefore 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. Negotiations stalled in 2011, but were revived thanks to the 2015 UN Sustainable Development Goals, whereby government leaders committed to banning harmful fisheries subsidies.

The WTO reached an agreement on fisheries subsidies at its 12th Ministerial Conference held on 17 June 2022. The text includes a ban on subsidies for three types of fisheries: fisheries engaged in illegal, unreported or unregulated (IUU) fishing, fisheries targeting overfished stocks, and fisheries in the 'unregulated' high seas (i.e. international waters where fishing is not yet managed by an intergovernmental organisation). Further restrictions on capacity-enhancing subsidies were not included in the final text as WTO members could not agree on the relevant exemptions for developing countries. Such additional disciplines will be subject to further negotiations. The next steps are formal acceptance of the agreement by at least two-thirds of WTO members, implementation of its provisions and the launch of negotiations on the additional disciplines, to be adopted within 4 years of the agreement's entry into force.

This is an update of a briefing published in December 2021.



IN THIS BRIEFING

- Background
- Fisheries subsidies
- Negotiation process
- The agreement on fisheries subsidies
- Next steps



Background

Fishery products are an important source of food and support the livelihoods of many coastal communities. According to the 2022 report by the UN Food and Agriculture Organization (FAO) on [The state of world fisheries and aquaculture](#), the fisheries sector employs roughly [38 million](#) people, most of whom work in developing countries in small-scale fisheries. Globally, fish provides [17 %](#) (up to [50 %](#) in certain developing countries) of the average per capita intake of animal proteins. The FAO report estimates that the fraction of stocks fished at unsustainable levels grew from 10 % in 1974 to [35.4 %](#) in 2019.¹ This increasing trend not only causes negative impacts on biodiversity and ecosystem functioning but also harms the contribution of fisheries to food security and the socio-economic situation of 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 increasing despite a rapid rise 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.

While there is no single cause of 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 among the most traded food commodities in the world. In 2020, almost [34 %](#) of their global volume was exported, with a value [comparable](#) to the export value of meat. Historically, fisheries subsidies have been a topic in 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),² [noted](#) in 1985 the situation of overfishing 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 included in 1995 in 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. duties) when they adversely affect the interests of other countries. However, these provisions address trade distortion and not environmental effects.

Fisheries subsidies

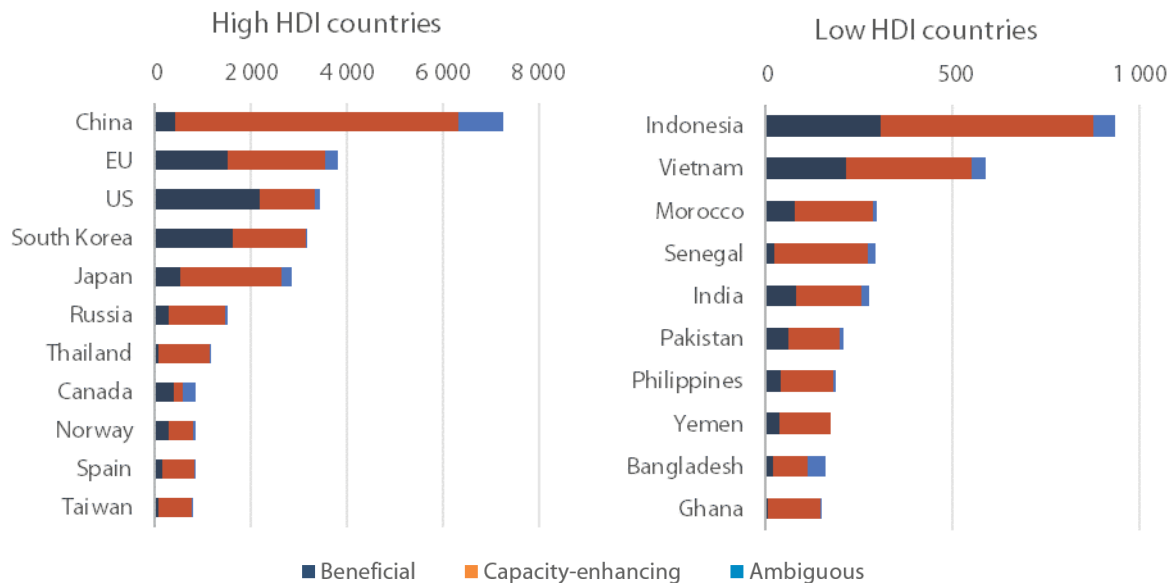
Global overview

Not all fisheries 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). Figure 1 shows the 10 largest subsidising countries per group (the EU was added as an extra entity in the high HDI group), and includes 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 fund – the **European Maritime, Fisheries and Aquaculture Fund (EMFAF)** – with a budget of roughly **€6 billion** for the 2021-2027 programming period. About 87 % of the fund falls under shared management with the Member States. This means that operational programmes are defined at national level and then approved by the European Commission. The distribution of the EMFAF budget under shared management is allocated among Member States according to the size of their fisheries 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 by an average of 40 % through national co-financing.

Over time, funding under the EU budget spent on fleet support has shrunk while becoming available for an increasing number of other areas, such as control measures, environmental aspects, marine knowledge and diversification of activities. The EMFAF still contains 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 operations (besides the fleet and cessation support measures mentioned above) are explicitly prohibited, such as the acquisition of equipment that increases the ability of a vessel to find fish or

the transfer or reflagging of vessels to third countries. Part of the 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, which 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 significant agreement is with [Mauritania](#), with an annual EU contribution of €60.8 million (of which €57.5 million for access rights and €3.3 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**. In [2020](#), the EU fleet consumed 1.9 billion litres of fuel, with the cost estimated at €700 million, representing 12.6 % of the operating costs.³ According to the **Energy Taxation Directive (ETD)**, Member States are exempt from taxation on 'fuel for the purposes of navigation within Community waters (including fishing)'. The subsidising value of the 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. The ETD is currently [under revision](#) and the Commission has [proposed](#) to end the tax exemption. Instead, a small nominal tax for shipping within EU waters would be introduced, which would contribute to fairer distribution of environmental costs. 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.

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 years, together with a national ceiling for the same period, amounting to €700 million for all EU countries combined. 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.

Additional **temporary State aid** frameworks were adopted in 2020 and 2022 respectively in response to the [coronavirus crisis](#) and [Russia's war on Ukraine](#) (the latter also allows aid to be used to offset the high energy prices). Another temporary instrument, set up in the form of an EU fund, is the [Brexit Adjustment Reserve](#). It was established to support the countries and sectors most affected by Brexit and includes an allocation related to the fisheries sector of €600 million.

Negotiation process

Launch of negotiations

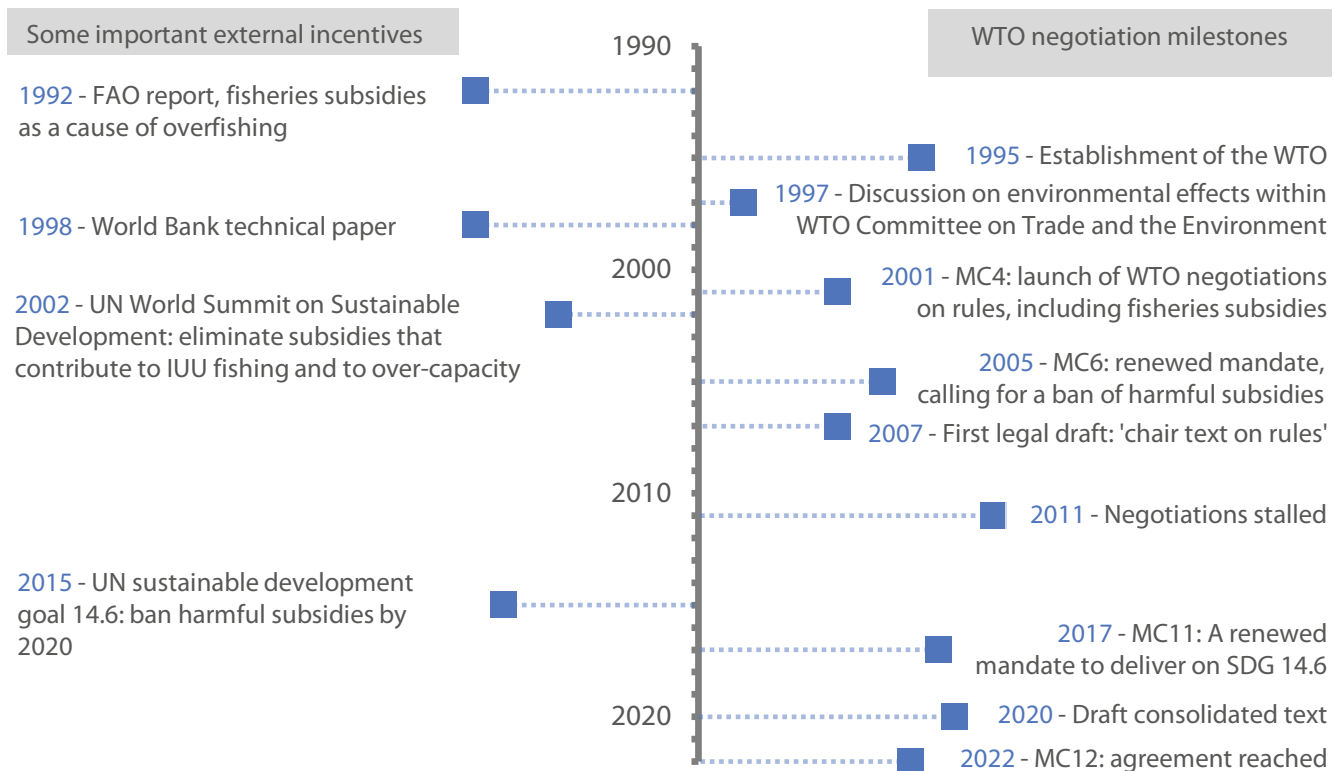
In the 1990s, public awareness of the need to regulate fisheries subsidies increased. It was no longer considered a matter of greater fairness in international trade, but now also as a matter of **protecting natural resources** from depletion. A [1992 FAO report](#) drew attention to the sheer scale of subsidies in the fisheries sector and to the fact that removing them could be largely offset by increased revenues through the more effective management of fish stocks. In the years that followed, new studies were published in this regard. In 1998, 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 fisheries 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.

The initial discussions 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 fisheries subsidies. The [mandate](#) of the 'negotiating group on rules' included the aim 'to **clarify and improve** WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries'.

Figure 2 – Timeline of WTO negotiations on fisheries subsidies



Source: Author's selection, November 2022.

The vague mandate led to a discussion about the **need for and scope** of specific rules, 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 the subsidies and the need to address their harmful effects. [Japan](#) and the [Republic of Korea](#) became the main opponents of strict disciplines, pointing to inadequate fisheries management as the main cause of stock depletion, considering it a responsibility of the coastal states, as 90-95 % of the catch is taken from national waters. Other countries, notably [China](#), observed that the mandate takes into account the importance of fisheries to **developing countries** and that special and differential treatment ([SDT](#)) should be accorded to them.⁴ Meanwhile, a growing share of the international community favoured new rules. The [2002 UN World Summit on Sustainable Development](#) called for the elimination of subsidies that 'contribute to IUU fishing and to over-capacity'.

While 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 their 'ability to catch fish' should be allowed. It [proposed](#) including examples of **red** (prohibited) and **green** (permitted) subsidies in the ASCM. [New Zealand](#) noted that overfishing is a product of both fishing capacity and activity ('fishing effort') and suggested focusing on **operating costs** as well. Some subsequent contributions suggested defining lists of red and green subsidies, yet differed as regards the scope and as to 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, 4 years after the launch of the negotiations, [MC6 in Hong Kong](#) directed the negotiation group to step up the process, while specifying the mandate in more detail. On fisheries subsidies, the [ministerial declaration referred](#) to the broad agreement on strengthening the subsidy disciplines, also by eliminating certain forms of subsidies that contribute to **overcapacity and overfishing**, and stated that negotiations should include **SDT** for developing and least-developed countries ([LDCs](#)).

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**. 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 exceptions, whereas [Japan and the Republic of Korea](#), but also [the EU](#), proposed a more narrowly defined list of prohibited subsidies.⁵ Other submissions focused on specific issues, such as [social security concerns](#) and [SDT](#).

In November 2007, the chair of the negotiating group submitted a draft '[chair text on rules](#)'. It listed specific **prohibited subsidies** (i.e. the bottom-up approach, albeit with a broad scope), including subsidies for vessel construction, support for operating costs, price and income support and subsidies for IUU fishing.

SDT for developing countries was covered, with a full exemption on the prohibited subsidies for LDCs and conditional exemptions for other developing countries. The text also included an obligation for countries to have **fisheries management** in place as a condition for subsidisation.

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 others focused on specific aspects, such as whether or not to ban subsidies on operating costs. Developing countries (e.g. [India and Indonesia](#)) strongly opposed making SDT conditional on having a **fisheries management** system in place.

Aware of the fact that the text had to be revised owing to the continuing differences of opinion, the chair asked [questions](#) at the end of 2008, with the aim of clarifying the members' positions. In March 2010, the chair [reported](#) that differences of opinion remained very large. In the following months, some members continued to support the text, with adjustments (e.g. the [US](#) and [Australia](#)), while others suggested changing the structure and concept (e.g. the [Republic of Korea](#) and [Japan](#)). New proposals also came in, such as on [SDT](#) and [fuel subsidies](#). In [April 2011](#), a new chair [noted](#) that many of the proposals were not 'convergence proposals' and that it was therefore not possible to table a revised text. 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 and the 'Friends of Fish' coalition [proposed](#) to include fisheries subsidies.

In [March 2014](#), the chair of the rules negotiating group noted that very few delegations advocated picking up from where negotiations had stalled in 2011.

Fisheries subsidies received renewed attention through the UN 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). Compared to the Hong Kong mandate, the explicit objective of banning subsidies that contribute to IUU fishing is new.

UN SDG 14 'life below water' on fisheries subsidies

By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to IUU fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective SDT for developing and LDCs should be an integral part of the WTO fisheries subsidies negotiation.

The December 2015 [ministerial declaration](#) from [MC10 in Nairobi](#) brought the focus back to the remaining Doha issues, but without explicit reference to fisheries subsidies. However, in a [ministerial statement](#), 28 members said they would seek to revive the work on fisheries subsidies.

The discussions then shifted on how to **achieve SDG target 14.6**. An October 2016 [EU contribution](#) included a concrete proposal with a limited list of prohibited subsidies. With this initiative, the EU took a leadership role by being the first member to present a textual proposal following the establishment of SDG 14.6. Other contributions throughout 2016 and 2017 had another focus, e.g. [Iceland, New Zealand and Pakistan](#) proposed a wider prohibition and [Indonesia](#) a more extensive chapter on SDT. A submission from [Guyana](#) on behalf of the African, Caribbean and Pacific Group of States pointed to the LDC goal expressed in [SDG 14.7](#), namely to increase their economic benefits through the sustainable use of marine resources.⁶

In July 2017, the chair summed up the [proposals](#) received by then, covering aspects in all areas (scope, prohibitions, SDT, transparency and notification, etc.). Further negotiations led to the adoption of [working texts](#) at the end of 2017. Contrary to the 2007 chair text, the differences of view were included through a range of options and brackets. The progress paved the way for a renewed [mandate](#) at [MC11 in Buenos Aires](#) in December 2017, including for setting a [target of delivering on SDG 14.6](#) in 2019.

Negotiations in the [spring](#) and the [autumn](#) of 2018 resulted into a new [working text](#).

In 2019, the [negotiations](#) included [monthly](#) sessions around four clusters: subsidies for IUU fishing; subsidies for overfished stocks; subsidies contributing to overcapacity and overfishing; and cross-cutting issues. New ideas were also submitted, for example, [Australia and the US](#) proposed a member-specific subsidy cap, to allow for subsidies to small-scale fisheries. [India](#) proposed to exempt fishing activities within the exclusive economic zones (EEZ) of developing countries from the ban on subsidies contributing to overfishing and over-capacity. [Argentina, Australia, New Zealand, the US and Uruguay](#) proposed 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 that 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 negotiations sessions were held from January to May 2020. In March 2020, India [revised](#) its 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 would not be subject to SDT, which would exclude [China](#) in particular.

The pandemic led to the postponement of MC12. Nevertheless, [negotiations](#) continued and in June 2020 the chair presented his first [draft consolidated text](#), not publicly disclosed. It was an important milestone, as the text became a solid basis for further negotiations. Monthly sessions [resumed](#) in autumn 2020, leading to new versions of the text in [November](#) and [December](#) 2020, whereby many

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.

Monthly [week-long](#) meetings continued in 2021, leading to a new draft in [May 2021](#). This version was publicly published as the '[chair text](#)', along with an [explanatory note](#). With the text, the chair [aimed](#) to bring members closer ahead of a virtual ministerial level meeting on 15 July 2021. On SDT, it contained India's criteria-based exemption as well as an alternative option combining elements from a contribution by [Argentina, Australia, the US and Uruguay](#) (i.e. SDT provisions apply when a member's share is a maximum of 0.7 % of the global catch) and from a contribution by [Brazil](#) (i.e. an annual subsidy cap of US\$25 million). Further [discussions](#) resulted in a new [chair text](#) and [explanatory note](#) in June 2021. The [ministerial meeting](#) marked another milestone, as ministers gave their [support](#) to the text as a basis for concluding negotiations, and mandated their negotiators to provide a text as clean as possible before MC12 – scheduled to start on 30 November 2021.

Negotiations in the following months resulted in a [new revision](#) of the chair text, [published](#) on 8 November 2021 and accompanied by the usual [explanatory note](#). The text incorporated a contribution by the [US](#) on forced labour (often associated with distant-water IUU fishing activities). Prior to the planned conference, the chair [submitted](#) a new [draft agreement](#) and [explanatory note](#) to the ministers on 24 November 2021. However, the possibility of closing a deal was once again hampered by the pandemic. The WTO [announced](#) that MC12 would be postponed, and it eventually took place from 12 to 17 June 2022. In the meantime, negotiations [continued](#). WTO members held [intensive negotiations](#) in Geneva during the week of 16-20 May 2022. A final [chair text](#), with only 10 options left in brackets, was published on 10 June 2022, along with the [explanatory note](#). As the chair noted, one of the main remaining points of discussion was SDT for developing countries.

At [MC12](#), WTO members reached an [agreement](#) after more than 20 years of negotiations. The importance of this achievement cannot be understated. It is only the second multilateral agreement since the creation of the WTO and the first to be focused on environmental sustainability. Whereas the prohibition on subsidies contributing to over-capacity and overfishing is not part of the text, the members agreed to continue negotiations on this issue. The agreement will lapse if such disciplines are not adopted within 4 years, unless decided otherwise.

The agreement on fisheries subsidies

Structure

The [ministerial decision](#), of which the agreement on fisheries subsidies was a part, was published on 22 June 2022. The agreement contains 12 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 'other' subsidies.
- Articles 6 to 11 cover specific provisions for LDCs, technical assistance and capacity building, notification, institutional arrangements, dispute settlement and final provisions.
- Article 12 is the termination clause, which provides that the agreement will be terminated immediately if more comprehensive disciplines are not adopted 'within four years of entry into force' of the agreement, unless the [General Council](#) of the WTO decides otherwise.

Scope and fuel subsidies

The agreement covers all subsidies that are *specific* to marine fisheries. Subsidies for aquaculture and inland fishing are excluded, as are government-to-government payments under **fisheries access agreements** (which is particularly important for the EU to continue its SFPAs). The agreement clarifies that a subsidy is attributable to the member conferring it, regardless of the vessel's flag or nationality of the recipient.

Fuel subsidies and the position of the EU

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 argued that fuel subsidies, including tax exemptions, are the most harmful and thus, whether *specific* or not, should be subject to the disciplines. Other members did not find it appropriate to subject generally available (i.e. *non-specific*) fuel tax relief schemes to the disciplines, as 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 the EU's 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 text does not include **fuel subsidies** that are generally available (i.e. *non-specific*), which may implicitly include also **fuel tax exemptions** (the former Article 1.2, removed already before MC12 in the latest chair text). This is one of the controversial sticking points, which is why the former article was presented in brackets (see box). In his last explanatory note, the chair noted a strong convergence among members to exclude non-specific fuel subsidies. Also absent from the agreement is a **notification requirement** for collecting information about such subsidies, without subjecting them (yet) to the substantive disciplines. In the latest chair text, this requirement was still present as an acceptable solution to those members who preferred to include non-specific fuel subsidies.

Ban on subsidies for three types of fisheries

The agreement prohibits three types of subsidies:

- On **subsidies contributing to IUU fishing**, Article 3 specifies that no 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. An important detail are the set of rules that make governments take action when IUU fishing determinations are made. The determination of being engaged in IUU fishing can be made by the **coastal state** (for activities in its waters), by the **flag state** (for vessels flying its flag) or by a **relevant RFMO** (for fishing activities within their competence). 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 transition time of 2 years for subsidies granted by developing members for fisheries within their exclusive economic zones. This '*peace clause*' means that the disciplines apply but would not be subject to dispute settlement. The agreement thus recognises the need to eliminate subsidies for IUU fishing, while also recognising the challenge of implementing the disciplines in developing countries.
- 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, in accordance with the available data. The article contains a *peace clause* identical to that in Article 3.
- Article 5 bans **subsidies to fisheries on the unregulated high seas**, which means that subsidies cannot be granted to fisheries in international waters outside the competence of an RFMO. This is a change from the previous chair texts, where this article consisted of a wide prohibition on subsidies contributing to overcapacity and overfishing.

Other provisions

Other disciplines included in Articles 5 and 6 are '**due restraint**' clauses. They provide that members should take special care and exercise due restraint in granting subsidies to vessels not flying their own flag and in granting subsidies to fisheries targeting stocks whose status is unknown. Members should also exercise due restraint when raising issues involving the LDCs.

Article 7 provides for the creation of a **fund** to provide developing countries with **technical assistance and capacity building** to help them implement the agreement (a new 'fish fund'). Already at an event during MC12, the WTO director general [announced](#) the creation of the fish fund, as many developing members had expressed their need for support in implementing the future agreement. The European Commissioner for Environment, Oceans and Fisheries, Virginijus Sinkevičius, and other donor partners expressed their strong support for the fund.

Notification and transparency provisions are provided for in Article 8. For example, it requires each member to provide information on the state of stocks in the fishery for which subsidies are granted, as well as the list of vessels and operators it has determined to be involved in IUU fishing. The transparency provision on the use of forced labour, previously proposed by the US, has been removed from the text. Article 9 provides for the establishment of a **committee on fisheries subsidies**, which would examine the information provided by members and review the agreement. It would maintain contact with the FAO and other organisations active in fisheries management.

Article 10 provides for enforcement through the **WTO dispute settlement system**, and Article 11 contains a number of final provisions, including an exemption for granting subsidies in case of **disasters** (not applicable to subsidies contributing to IUU fishing or subsidies regarding overfished stocks, and not applicable in the event of economic or financial crises).

Next steps

Two types of work are to be done in parallel now: the ratification and implementation of the current agreement, and the launch of a second wave of negotiations on additional disciplines.

Ratification and implementation

Ratification by WTO members is the essential step for the agreement to enter into force. Concretely, it requires at least two-thirds of the 164 WTO members (i.e. at least 110 countries) to deposit their 'instruments of acceptance'. In accordance with its exclusive competence, the EU ratifies on behalf of its 27 Member States. The WTO director general set the target for this adoption to [less than a year](#) after the agreement is reached, i.e. by June 2023. The agreement would then be added to [Annex 1A](#) of the Agreement establishing the WTO (covering multilateral agreements on trade in goods). In the EU, ratification will take place through an international agreement under Article 218 of the Treaty on the Functioning of the European Union (TFEU), which also requires Parliament's consent.

In parallel to ratifying the agreement, members can take steps to initiate the process of implementation, in order to be ready once the agreement enters into force. It could include actions such as identifying and executing changes to laws and administrative procedures. The new 'fish fund' would help developing countries in the implementation and in fisheries management.

Additional disciplines

Apart from ratifying and implementing the agreement, the members also need to engage in the 'second wave' of negotiations in order to deliver on the additional disciplines. To this end, the ministerial declaration outlines the mandate, with explicit references to the 'outstanding issues' of the previous two chair texts and to 'fisheries subsidies that contribute to overcapacity and overfishing, recognising appropriate and effective SDT for developing countries (including LDCs)'.⁷ The goal for the additional disciplines is to curb such fisheries subsidies, even before a stock is overfished. The ministerial declaration introduces precise deadlines for such additional disciplines: *recommendations* should be made to MC13, while the termination clause of the agreement sets the ultimate deadline for the adoption of additional disciplines to 'within four years of entry into force'.

As for the scope of subsidies that contribute to overcapacity and overfishing, an illustrative list is given in Article 5.1 of the two most recent chair texts. 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; and subsidies covering operating losses.

It is important to note that in the two most recent chair texts, 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 over-capacity and overfishing and each subsidy must therefore be viewed in the specific context in which it is provided.⁸ According to the European Commission, this provision would allow compatibility with the EMFAF, as the CFP ensures the sustainable management of fishery resources.

However, the main breaking point at MC12 was SDT, as WTO members could not agree on the three specific **SDT provisions for developing countries (excluding LDCs)**, namely:

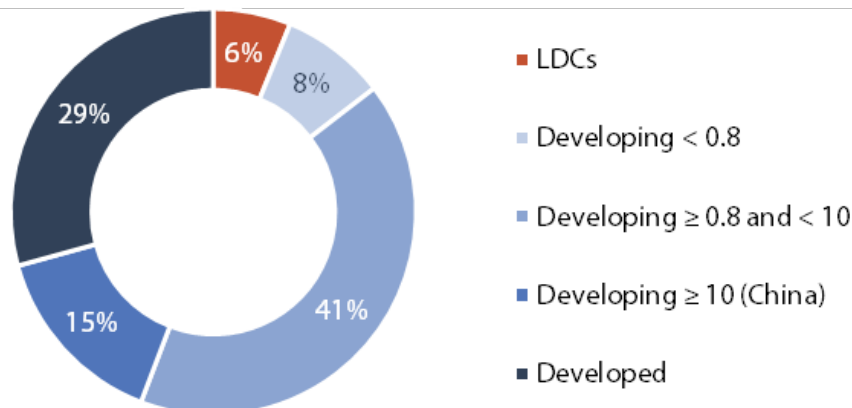
- the length of the transition period during which the disciplines would not apply (set at 7 years or up to 2030 in the latest chair text);
- a '*de minimis*' exemption for those whose global marine capture share is under a certain threshold (members catching less than 0.8 % of the global total in the latest chair text);
- an exemption for artisanal fishing within a certain distance from a country's coast (12 or 24 nautical miles in the latest chair text).

India was one of the strong opponents. On the transition time, it stated that developing countries not engaged in distant water fishing should be exempt for at least [25 years](#). India also considered the [de minimis exemption](#) unfair, as it does not take into account the size of the nation (and therefore the number of people it has to support). On the exemption for artisanal fishing, it proposed to set the geographical limit to the entire EEZ (i.e. up to [200 nautical miles](#) from the coast).

There was also concern about SDT for those developing countries that fish on a large industrial scale. The three largest fishing countries are now all developing countries, together accounting for 30 % of [global marine catches](#) in 2020: China (15 %), Indonesia (8 %) and Peru (7 %). Particularly for China, both the largest subsidising and largest fishing nation, SDT became increasingly difficult to justify. The last chair text therefore contains a provision stipulating that SDT would not apply to members whose annual share of the global volume of marine capture production is at or above X %. In the chair text preceding the latest one, this 'X' was set at 10 %, thus excluding China (only) from SDT.

On **LDCs**, Article 6.1 of the latest chair text stated that the prohibition under Article 5.1 would not apply to them. Although this straightforward exemption was generally accepted, a transition period of 'X' years for 'graduating' LDCs (in Article 6.2) remained in brackets in the latest chair text.

Figure 3 – Combined share of the global catch by group of countries classified according to the proposed SDT criteria (2020 data)



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

Figure 3 illustrates the share of catches by group of countries according to their development status in the WTO (namely developed, developing country and LDCs), with developing countries grouped according to the proposed SDT thresholds of 0.8 % and 10 %.

In order to kick off the second wave of negotiations, some 100 WTO members [met](#) in France on 10 October 2022, where they also discussed the need to elect a new chair to lead the negotiations.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Grieger G., [Outcome of the 2022 WTO ministerial conference: Is the glass half-empty or half-full?](#), EPRS, European Parliament, July 2022.

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

Popescu I., [Illegal, unreported and unregulated \(IUU\) fishing](#), EPRS, European Parliament, October 2022.

ENDNOTES

- ¹ This calculation treats all fishery stocks equally, regardless of their biomass and amount of catch.
- ² GATT was signed in 1947 with a view to making international trade easier. In 1995, it was absorbed in the WTO.
- ³ The percentage was quite low in 2020 due to the drop in energy prices as a result of the coronavirus pandemic. For 2022, due to the [high fuel costs](#) following Russia's war on Ukraine, the opposite trend is expected.
- ⁴ [SDT](#) means provisions that give special rights to **developing countries**, including least developed countries ([LDCs](#)). 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.
- ⁵ [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.
- ⁶ [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'.
- ⁷ An explicit reference is made to the [chair text of 24 November 2021](#) and [the one of 10 June 2022](#).
- ⁸ The 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.

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