



# Note

## Overfishing and Stock Assessments: An Analysis of WTO Fisheries Negotiations

By Barbara Dzidzornu Adagblenya

### Summary

Over the past decades, fish stocks have been fast depleting as a result of overfishing, over capacity and other unsustainable practices in the fisheries sector. Growing at an annual average of 3.2 percent, human consumption of fish products has outdone population growth. While this has contributed to improving people's diet all over the world, depleting fish stocks present challenges that the global community endeavoured to address as part of the Sustainable Development Goals (SDGs). In particular, pursuant to SDG 14.6, discussions at the World Trade Organization (WTO) on better disciplining fisheries subsidies have regained momentum. This paper presents current discussions in the context of the ongoing WTO fisheries negotiations, particularly focusing on the issues of overfishing and stock assessment and how these can be determined.

## Introduction

Fisheries are important in the world trading system not only because of its contribution to trade, but also because it accounts for almost 17% of animal protein consumption in the world.<sup>1</sup> In 2016, an estimated 171 million tonnes<sup>2</sup> of total fish production was recorded and this contributed immensely to nutrition and in general, food security in the world. Also, the fish industry is a major source of income for governments particularly in developing countries, where over 90% of fishermen are located, with net trade income for these countries at US 36 billion in 2016.<sup>3</sup> Globally, exports in the sector reached US\$ 153 billion in 2017, with an associated 200 million people in direct and indirect employment.<sup>4</sup> The fisheries industry has further created employment in various areas through the integration of the sector in Global Value Chains (GVC). Amongst the sectors with noticeable job creation are: fishing, landing sites, harbors, refrigeration and processing facilities, maritime and logistical services, financial services, insurance, maintenance and repair of fishing vessels, and related hotel and restauration services. All these combine to raise the importance of the sector in the economy of both developed and developing countries.

Again, the consumption of fish products has seen an increase over the decades leading to recent reports of depleting stocks resulting from

overfishing, over capacity and other related issues in the fisheries sector. Not only is the human consumption of fish growing at an annual average of 3.2 percent, but it has also outdone the rate of population growth.<sup>5</sup> This growth in consumption of fish has further seen an improvement on people's diet all over the world contributing to food and nutrition.

Nonetheless, the depleting fish stocks present challenges to attempts being made through the United Nations (UN) Sustainable Development Goals (SDGs) to address food security and sustainability, as a way of reducing poverty and ensuring inclusive growth. The role of food and agriculture, albeit fisheries, remain crucial in addressing the entire set of the SDGs, particularly SDG 14 that seeks to ensure the conservation and sustainable use of the oceans, seas and marine resources towards sustainable development. The foreseen effects of the depletion in fish stocks is therefore recognized as a global issue; hence the need to address it as such at the global level. The contributions of the fisheries trade which account for over 9 percent<sup>6</sup> of total exports in agricultural products, made the World Trade Organization (WTO) a crucial platform to address the issues of depleting stocks.

In 2001, negotiations on fisheries subsidies (a major cause of the depleting stocks) was launched at the WTO Doha Ministerial Conference (MC) with a mandate to improve

---

<sup>1</sup> UNCTAD (2018). 2nd Oceans Forum on Trade-related Aspects of SDG 14. Retrieved from: <http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=1831> 17/07/2018.

<sup>2</sup> FAO. 2018. *The State of World Fisheries and Aquaculture 2018 - Meeting the sustainable development goals*. Rome.

<sup>3</sup> UNCTAD (2018).

<sup>4</sup> Ibid

<sup>5</sup> FAO. 2016. *The State of World Fisheries and Aquaculture 2016. Contributing to food security and nutrition for all*. Rome. 200 pp.

<sup>6</sup> Ibid.

the existing disciplines of fisheries subsidies.<sup>7</sup> The mandate was further highlighted at the Hong Kong MC specifically calling for the prohibition/elimination of subsidies that contributed to overcapacity and overfishing, however this Hong Kong MC further shifted the discussion from arguments about the mandate on subsidies at the Doha MC to narrowing down on the specific subsidies to prohibit as well as S&D treatment for developing countries. As a member-driven organization with clear commitments by countries, the WTO platform offers an opportunity for countries to agree on effective disciplines that will address the issues of overfishing and overcapacity as factors contributing to depleting fish stocks. Furthermore, at the Buenos Aires Ministerial Conference (MC11), members agreed to conclude negotiations and adopt an agreement on fisheries subsidies by 2019, which will address in particular the SDG 14.6 commitment.

The above-mentioned statistics if anything, point to the importance of the fisheries sector and underscores the need to address the depleting fish stocks that has been underway for over decades. Challenges arising from stock depletion has led to concerns raised by countries on the need to find sustainable ways of improving fish stock production to meet the future needs of the world's growing population. Hence, the call to eliminate and or prohibit fisheries subsidies which has been ascribed to be a major contributing factor to overfishing.<sup>8</sup> The

WTO has since held discussions on best practices/ strategies to address fisheries subsidies, overfishing and related issues. Members of the WTO are also working to achieve the target set by United Nations (UN) Sustainable Development Goal (SDG) 14, to eliminate all harmful fisheries subsidies as well as measures that contribute to overcapacity and overfishing. The mandate specifically sets a deadline for the target set at the next MC in 2019 by which time the WTO members are expected to have complied with their commitments by reaching an agreement on subsidies that contribute to overfishing and overcapacity. The members had hoped to address the issue at the recent MC held in Buenos Aires, Argentina in December 2017, but this failed; and instead, they agreed to allow negotiations to continue and to work towards making a deal or agreements by the next MC to be held in 2019.<sup>9</sup> This commitment by members is a step towards multilateral efforts at fulfilling the SDG 14.6 mandate.

The importance of the fisheries sector cannot be over-emphasized; however there have been challenging developments such as subsidies, overfishing, overcapacity and other issues that threaten to mar the sector's contribution to food and nutrition as well as employment in countries whose residents rely on the sector as a source of livelihood. These challenging developments contribute to depleting fish stocks and as such endanger the sustainability of fish

---

7

[https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm)

<sup>8</sup> Kituyi M. & Thomson P. (2018) 90% of fish stocks are used up – fisheries subsidies must stop. World Economic Forum. Retrieved from:

<https://www.weforum.org/agenda/2018/07/fish-stocks-are-used-up-fisheries-subsidies-must-stop/> 17/07/2018

<sup>9</sup> ICTSD (2018). WTO Members Press on With Fisheries Talks, Weigh New Approaches to Overfished Stocks. BRIDGES, VOLUME 22 - NUMBER 22. Retrieved from: <https://www.ictsd.org/bridges-news/bridges/news/wto-members-press-on-with-fisheries-talks-weigh-new-approaches-to> 18/07/2018

stocks to meet future needs. This paper seeks to present current discussions on fisheries, particularly focusing on the issues of overfishing and stock assessment and how these can be determined, in the context of the ongoing WTO fisheries negotiations.

## Factors contributing to fish stock depletion

### Fisheries subsidies and trade

Fisheries are a major part of trade among countries, however, it is acknowledged that subsidies provided by certain countries have enabled massive exploitation of this resource at a rate that threatens extinction of certain species.

Subsidies in the sector take a multiplicity of forms, including: guarantees, tax breaks, low-cost loans and grants, price supports and related services to the sector. These measures have been geared at building boats, constructing port facilities, switch fishing gear, buying fuel, bait etc. While these subsidies if examined individually may appear as harmless, it nonetheless aims at enhancing the extraction of a resource that is under pressure; thus, hastening its depletion and making the sector profitable. In addition, such subsidies perpetuate inequality, given that it can be afforded by the richest

governments, thus creating an unfair competition for developing countries and LDCs.<sup>10</sup>

### Harmful subsidies

Harmful Fisheries subsidies including fuel subsidies have been attributed to the decrease in fish stocks over the years, with an estimated annual cost of over \$20 billion.<sup>11</sup> These subsidies not only lead to exploitation of fish stocks, they also tend to be beneficial to large fleets at the cost of small-scale fisheries. Harmful subsidies are usually capacity-enhancing and can take several forms including fuel subsidies, capital inputs, tax exemptions, infrastructure investments, and fisheries development projects which contribute to overfishing and overcapacity.<sup>12</sup> The SDG 14 directly speaks to these group of subsidies.

### Other factors

There are other factors that have been reported as contributing to fish stock depletion. These factors include technological advancements, inadequate monitoring of open-access to fisheries, overcapacity, poor management, 'by-catch', increasing demand or market for fish, illegal and unregulated fishing.<sup>13,14</sup>

Fishing technology has also contributed to depleting fish stocks.<sup>15</sup> Technologies including Global Positioning Systems (GPS) allows boats

---

<sup>10</sup> United Nations and Food and Agriculture Organization of the United Nations (2017) Trade-Related Fisheries Targets: Sustainable Development Goal 14. Pg. 14 Retrieved from: [http://unctad.org/en/PublicationsLibrary/ditcted2017d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditcted2017d3_en.pdf) 20/07/2018

<sup>11</sup> World Economic Forum (2018). 90% Of Fish Stocks Are Used Up – Fisheries Subsidies Must Stop. Retrieved from: <https://www.weforum.org/agenda/2018/07/fish-stocks-are-used-up-fisheries-subsidies-must-stop/> 16/07/2018

<sup>12</sup> Sumaila, Lam, Le Manach, Swartz and Pauly (2013) (infra) p.24 as cited in South Center (2017). The WTO'S

Fisheries Subsidies Negotiations. Retrieved from: [https://www.southcentre.int/wp-content/uploads/2017/08/AN\\_TDP\\_2017\\_5\\_The-WTO%E2%80%99s-Fisheries-Subsidies-Negotiations\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2017/08/AN_TDP_2017_5_The-WTO%E2%80%99s-Fisheries-Subsidies-Negotiations_EN.pdf) 28/07/2018

<sup>13</sup> South Center (2017)

<sup>14</sup> UNEP.

<sup>15</sup> UNEP. Overfishing, a major threat to the global marine ecology. Retrieved from:

[http://www.grid.unep.ch/products/3\\_Reports/ew\\_overfishing\\_en.pdf](http://www.grid.unep.ch/products/3_Reports/ew_overfishing_en.pdf) 09/09/2018

to locate with precision best fishing spots. Modern fishing vessels can stay at sea for longer times and fish at greater depth than they were able to do before. Also, modern transport and food preservation technologies encourage fishing activities and vessels strive to ensure that they can supply fresh fish in all seasons.

Fish stocks are open-access resources<sup>16</sup> and therefore can be exploited by anyone. The more fishing vessels there are operating, can lead to depleting stocks. In time, this overcapacity can have adverse effects on marine resources and reduce the food supply contribution made by fisheries.

Furthermore, ‘bycatch’ which included marine fishes such as undersized and young fish that were not targeted also contribute to depleting fish stocks. About 25 percent of fish captured do not make it to the market while an estimated 27million tonnes<sup>17</sup> of unwanted fish do not survive and are mostly thrown away. These activities do not only pose a challenge to food chains but also have adverse effects for marine systems and fisheries sector at large and thus, contributing to fish stock depletion.

## SDG 14.6/7 and its requirements

Sustainable Development Goal 14, amongst other things seek to end support for harmful subsidies. A number of targets outline measures and indicators towards this goal. The SDG primarily seeks to “to 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” by 2020. Three specific targets outline strategies towards this agenda. These are:

- Target 14.4- which aims at regulating harvesting, as well as ending over fishing, illegal and unregulated fishing. These targets are to be attained through science-based management plans to restore depleting fish stocks to levels that can produce sustainable yield.
- Target 14.6: which aims to prohibit subsidies that contribute to overfishing, unregulated fishing and over capacity. It further aims at inhibiting the introduction of new subsidies in these areas, while recognizing the need for differential treatment for developing countries using these subsidies.
- Target 14.b: seeks to provide small scale farmers with access to marine resources and markets.<sup>18</sup>

The urgency of decreasing fish stocks and the need for addressing the issue, led to a WTO agreed decision to address the issue by 2019. This was a commitment made under UN SDG 14, after much consideration on how long the issue has been on the WTO agenda. The mandate seeks to ‘clarify and improve existing WTO disciplines on fisheries subsidies’<sup>19</sup> as a

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> UNCTAD (2017) Briefing on the fisheries regulatory framework at the multilateral level. For more information, see:

<http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=1297> 21/07/2018

<sup>19</sup> WTO. Retrieved from:

[https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm) 03/09/2018.

step in adhering to the SDG 14 commitment. The WTO members have since increased efforts of negotiations since the last ministerial conference in a bid to meet the 2019 target of addressing the issue at the next ministerial conference. Although it has been confirmed that MC12 will be held in 2020, in Astana-Kazakhstan, the members agreed to maintain the December 2019 deadline for fisheries subsidies amidst calls to reach an agreement once and for all.

## Developments in Fisheries Negotiations at the WTO

### The European Union Proposal

The European Union acknowledged the need to address issues relating to fisheries on the multilateral level as mandated by the UN SDGs by 2020. The EU further noted the alarming rate of depletion of fish stocks, hence the urgency of coming up with disciplines to address harmful subsidies that contribute to overfishing. The EU in their proposal further suggested a ban on subsidies that increase the capacity of fishing. However, the EU delegation recognized the need for special and differential treatment for developing countries; and to make some exceptions in recognition that fisheries contribute to livelihoods and export earnings in LDCs. Further, the EU highlighted the need for transparency, hence a notification requirement on the use of such subsidies; while making sure the latter does not pose burdens on WTO

members.<sup>20</sup>

### Least Developed Countries (LDCs) Proposal

The fisheries industry has not only been recognized as a vital source of livelihood for LDCs, the sector also makes substantial contributions to their export earnings, food and nutrition security, rural development and economic growth. These benefits enjoyed by LDC in the fisheries sector are being eroded by harmful subsidies granted to large-scale industrial fishing, which in turn has contributed to overcapacity and overfishing, thus limiting development efforts in LDCs with regards to food security and economic growth. LDCs have a limited fishing capacity, hence their global catch remains low. However, these group of countries are affected by the decrease in global fish stocks, a trend attributed to harmful subsidies granted to large industrial fishing fleets. The fishing activities are conducted by these industrial fleets, are often carried out outside their national jurisdiction and sometimes close to LDC's exclusive economic zones depleting reserves available to developing countries. The WTO negotiations are therefore aimed to advance disciplines to subsidies that among other things contribute to overcapacity and overfishing. The disciplines are further earmarked to regulate large scale industrial fishing, thus addressing the LDC fishery concerns. Members also seek to establish sustainable and effective management strategies for fisheries but propose a few exceptions where the disciplines should not apply to subsidies

---

<sup>20</sup> WTO (2017) Advancing Toward A Multilateral Outcome On Fisheries Subsidies in the WTO. Retrieved from: <https://webcache.googleusercontent.com/search?q=cache:>

[RMqOoijt9gbMJ:https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?3Ffilename%3Dq:/TN/RL/GEN181R1.pdf+%&cd=1&hl=en&ct=clnk&gl=ch](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?3Ffilename%3Dq:/TN/RL/GEN181R1.pdf+%&cd=1&hl=en&ct=clnk&gl=ch) 21/07/2018

provided to activities as follows: (i) “Coastal fishing activities related exclusively to artisanal, traditional, or small-scale fisheries within the Member's territorial waters; (ii) Fishing activities, which exclusively exploit domestic fish stocks whose ranges are confined to the Members' EEZ; (iii) Fishing activities, which exclusively exploit quotas, or any other rights established by a Regional Fisheries Management Organization (RFMO) or a regional fisheries management arrangement.”<sup>21</sup>

The LDCs also proposed to prohibit subsidies to the following activities: (i) “Subsidies to fishing vessels or fishing activity negatively impacting fish stocks that are overfished; (ii) Subsidies provided to vessels or operators engaged in illegal, unreported and unregulated fishing (the prohibition should also apply to illegal transshipment at sea); and (iii) Subsidies to capital and operating costs which contribute to overcapacity and overfishing.”<sup>22</sup>

LDCs recognised the usefulness of enhanced transparency; however, they reiterated that any additional requirements in relation to transparency should not be burdensome for LDCs. The countries also noted that prohibition i.e. subsidies to capital and operating costs which contribute to overcapacity and overfishing should not apply to LDCs. However, they highlighted the need for technical assistance and transition periods to be granted to LDCs as a form of special and differential treatment, so as to enable these countries meet the institutional

and financial capacity to implement the disciplines. They also appealed for capacity building programs to aid LDCs in developing their fishing capacity in a sustainable manner, and in stock assessments and regulation of fishing activities.

## Other Proposals

Other proposals of other WTO members were focused on the following: (i) prohibition of fisheries subsidies by the agreed MC12 2019 mandate; the relevance of including S&D treatment in the negotiations; (ii) the need for transparency with regards to fisheries subsidies; (iii) and institutional arrangements towards achieving the UN SDG 14.<sup>23</sup>

These proposals were discussed during the MC11 and members agreed to work towards the adoption of “an agreement on comprehensive and effective disciplines that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing” by the next ministerial conference in 2019 to fulfil their UN SDG14 mandate.<sup>24</sup>

## Challenges of WTO Negotiations on overfishing

As mentioned earlier, fisheries serve as a source

<sup>21</sup> WTO (2016) LDC Group Submission on Elements for WTO Fisheries Subsidies Disciplines. Retrieved from: <https://webcache.googleusercontent.com/search?q=cache:HQdCNZzAx8EJ:https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx%3Ffilename%3Dq:/TN/RL/GEN184.pdf+%&cd=1&hl=en&ct=clnk&gl=ch> 30/07/2018

<sup>22</sup> *Ibid*

<sup>23</sup>WTO (2017). Negotiations on fisheries subsidies. For more information: [https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm) 28/07/2018

<sup>24</sup> WTO (2017) Fisheries Subsidies. WT/MIN(17)/64 WT/L/1031

of livelihood and plays a role in nutrition. Over the decades, depletion in fisheries stock has been recorded which poses a challenge not only to the sector in terms of exports but it threatens the livelihoods that depend on it. It can be recalled that some countries with the means provide subsidies to their fisheries sector which contribute to overfishing and overcapacity; however, there was a call through the UN SDGs to prohibit undue advantages or regulate activities in the fisheries sector.

In the WTO negotiations, the issue of overfishing remains problematic. Although negotiations are still ongoing in this regard, varied interpretations and definitions have been proposed by various members on some key terms, however the members are seeking to reach an agreement by December 2019. The variations in opinion on the topic is a challenge that members must work towards overcoming in order to advance the negotiations and towards reaching an agreement in time.

Whereas no internationally binding definition of overfishing exists, the United Nations Convention on the Laws of the Sea (UNCLOS) in Article 6 states that “[t]he coastal State [...] shall ensure through proper conservation and management measures, that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield [...]” The articles in addition call for the implementation of measures to restore species to levels that can

produce a sustainable yield. Other international frameworks including the United Nations Fish Stocks Agreement (UN 1995) and the FAO Code of Conduct for Responsible Fisheries (FAO 1995) use similar wording.

Assessing fish stocks remains a challenging endeavor given the limited data and capacity at both country and regional levels. This challenge is compounded in areas of high species diversity and small fish stocks; such as in low income countries in Asia, Oceania, the Caribbean and Africa.

These data limitations can be attributed to different interrelated factors, such as:

- The difficulty in monitoring and assessing fisheries in tropical areas of high biological diversity, dominated by multi-species and multi-fleet small-scale activities, where conventional fisheries assessment methods are not suited;
- The tendency of countries to allocate human and financial resources preferentially to large and economically important fisheries;
- The lack of financial support for the development and maintenance of national fisheries statistical systems; and
- Weak fisheries management systems that lack mechanisms for monitoring and reporting management performance to stakeholders and the public at large.<sup>25</sup>

There are other key concepts that underpin the WTO negotiation on overfishing. Some of these concepts are directly related to the definition of

---

<sup>25</sup> de Souza, M. C., Lem, A., & Vasconcellos, M. (2018). Overfishing, Overfished Stocks, and the Current WTO

Negotiations on Fisheries Subsidies. *Fisheries Subsidies Rules at the WTO*, 83. Pg. 9



what overfishing means hence, remain very useful in understanding the difficulties associated with the negotiations at the WTO. Some key definitions that relate to fisheries and over fishing in general are discussed below.

## **Fish Stock**

A fish stock refers to population or subset of species, such as mollusk, fish or crustacean that inhabits a specific geographic area and participates in similar reproductive process. It can further be classed a distinct group with similar biological characteristics, with minimal or no mixing with related species.<sup>26</sup> The challenge of fisheries in relation to stocks emanate from the cross blurred jurisdictional boundary of stocks, whereby a migratory nature of stocks requires cross country monitory mechanisms. Thus, overfishing by one state inevitably causes losses to the other state. This challenge reinforces the need for international frameworks and agreements when discussing subsidies to the fisheries sector. Members recognize relevant international laws including the UN Agreement for the Implementation of the Provisions of UNCLOS in relation to Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks as a reference point in addressing the less distinct jurisdictional boundary of stocks during the negotiations. This point was reemphasized in some proposals including that of the EU, for WTO negotiations on the disciplines on fisheries subsidies. It is now up to members to come up with a decision on cross country monitory mechanism or otherwise since this will go a long way to clarify the issue on migratory

fish stocks.

## **Maximum sustainable yield (MSY)**

MSY refers to the highest catch that can be continuously taken at a particular time under existing conditions in the environment. The Maximum Sustainable Yield is influenced by a variety of factors, ranging from environmental conditions to the biological characteristics of the species within the ecosystem. The MSY is therefore important towards maintaining the sustainability of fish stocks.

## **Stock assessments and reference points**

Stock assessments refer to the collection and analysis of statistical and biological information towards determining the status of fish, about agreed reference points and other changes in environment and stocks. These assessments rely on data collated from multiple sources including surveys, catch statistics, behavior of species and life history, knowledge and habitat requirements amongst other sources. Stock assessments are conducted at national, regional and international level, and experts who undertake these studies coordinate and share information received.

In relation to this is management reference points- which refer to indicators on desirable and undesirable states of fisheries based on agreed values and indicators. These indicators can be biological, technical or based on economic indicators.

---

<sup>26</sup> Ibid pg. 3

## Who is responsible for stock assessments?

One key issue arising from the negotiations is related to the determination of overfished stocks is stock assessments. Fish stock assessments need to be conducted to determine overfishing and this process can take up to 10 years<sup>27</sup> to complete given the existence of the required mechanism and institutions. Propositions have been centered around national governments or RFMOs/RFPAs as the institutions that will be responsible for conducting such stock assessments, using available best scientific methods and in cognizance with the relevant international laws such as the UNCLOS.

Developing countries however reiterate that any conclusions agreed on with respect to stock assessments should make provisions for some flexibilities and should not place any burden on them.

## Who bears the costs?

Given that some members proposed that countries determine overfishing based on their national regulations, this means that the cost will also have to be borne by these national governments. If stock assessments are going to be conducted by RFMOs, then it is still likely that countries belonging to the RFMO will have to pay for the cost. However, developing countries and LDCs have emphasized the need for some flexibilities and to ensure no requirements become burdensome for them.

## Impacts of overfishing

Fisheries serve as a major trade for countries and a major source of protein for most people. The harmful subsidies granted by countries to their fisheries sector has led to overfishing in some areas. Harmful Fisheries subsidies have been accredited with increased harvest hence depletion of fish stocks especially by rich countries. This has negative consequences on developing countries as they are unable to compete fairly on the global markets due to limited capacities.<sup>28</sup> The depletion of fisheries stock means there is less and less harvest which might result in income losses and even high prices of fish products. This in turn poses a challenge to food security and nutrition improvement programs in developing countries. Less harvest of fish stocks resulting from the depletion of fish stocks means a loss in revenue for countries that export fish products or have high local consumption. The UN and FAO estimates assert a decline of fish stocks from sustainable levels of 90% in 1974 to 68.8% in 2013. Moreover, overfished and over exploited stocks between 2008 and 2013 was at 1/3 of global fish stocks.<sup>29</sup>

To address the challenge of overfishing, concerted efforts from states must address key issues that underpin over fishing. These include determining the total allowable catch and related regulations on defining jurisdiction on a state's exclusive economic zone. Coastal states and competent international bodies will be required to consider scientific evidence and related

---

<sup>27</sup> South Center (2017)- The WTO's Fisheries Subsidies Negotiations. Retrieved from: [https://www.southcentre.int/wp-content/uploads/2017/08/AN\\_TDP\\_2017\\_5\\_The-](https://www.southcentre.int/wp-content/uploads/2017/08/AN_TDP_2017_5_The-)

[WTO%E2%80%99s-Fisheries-Subsidies-Negotiations\\_EN.pdf](#) 24/07/2018

<sup>28</sup> Ibid

<sup>29</sup> Ibid

statistics towards conserving fish stocks. The specific requirements are detailed in Articles 117 and 118 of the UNCLOS.<sup>30</sup>

The UNCLOS requirement entreats states towards adopting conservation and management measures that will maintain or restore the populations of harvested species (in this context fish stocks) at levels that can produce the maximum sustainable yield and to ensure that these species are not endangered by overexploitation. It further requires cooperation on the part of coastal states and relevant international organization, be it at the global or regional level. Again, the requirement entails taking into consideration the special needs of coastal fishing communities and developing states.

Negative subsidies have been reported as one of the major causes of overfishing and overcapacity, however members have varied opinions on what exactly constitutes a negative subsidy. Below are tables showing some classifications made by countries in terms of subsidies and fisheries.

**Table 1: Classification of subsidies by country delegations**

<b>Proposal</b>	<b>Formulation of subsidy prohibition related to overfishing</b>
<b>LDC Group</b>	<b>Subsidies to fishing vessels or fishing of fish stocks that are in an overfished condition</b>
<b>ACP Group</b>	<b>Subsidies to fishing vessels, fishing or fishing activity of targeted fish stocks that are in an overfished condition;</b>
<b>Argentina et al.</b>	Subsidies for fishing that negatively affect fish stocks that are in an overfished condition 'Negatively affect' - the negative effect of such subsidies shall be determined based on the best scientific evidence available to that Member
<b>EU</b>	Subsidies for fishing outside the territorial sea that negatively affect targeted fish stocks that are in an overfished condition. ' Overfished condition' - As recognised as overfished by the national authorities of the Party or by the relevant Regional Fisheries Management Organisation or Arrangement. In the absence of sufficient data to make such a determination, the stock shall be presumed to be in an overfished condition.
<b>New Zealand et al.</b>	Subsidies in connection with fishing and fishing related activities involving fish stocks that have not been assessed or have been assessed to be in an overfished condition.

Retrieved from: South Center (2017)- The WTO's Fisheries Subsidies Negotiations

<sup>30</sup> United Nations and Food and Agriculture Organization of the United Nations (2017) Trade-Related Fisheries Targets: Sustainable Development Goal 14. Pg. 14

Retrieved from:  
[http://unctad.org/en/PublicationsLibrary/ditcted2017d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditcted2017d3_en.pdf) 20/07/2018

In the formulations of subsidy prohibition related to overfishing, members presented varied views as presented in the table 1. While all members agree on prohibiting subsidies to fishing of fish stocks that are in an overfished condition, some members including the LDC and ACP groups failed to present who determines these overfished stocks or what are negative effects. However, the EU and Argentina et al. propose that the determination of overfished stocks or negative effects of subsidies be determined by either the member whose jurisdiction is in question or a RFMO. Argentina et al. further suggested the determination of negative effects be done based on available scientific evidence. However, Argentina et. al.'s proposition goes to assume that unless a fishing activity can be proven to negatively affect overfished stocks, then it might become difficult to prohibit related subsidies.

The difference in proposals presented has implications for the negotiations, as members will need to reach a common ground on which the needs and concerns of all members will be addressed. Reaching a consensus is necessary to answer the question of whether a member or an RFMO determines an overfished stock, and if this position will be acceptable to all other members or vice versa. Again, the proposal from New Zealand et al. suggests assuming unassessed stocks as overfished, but this proposition reserves the right of granting fisheries subsidies to countries who can regularly conduct stock assessments. The proposal seems to work in favor of developed countries disadvantaging the interest of developing countries especially LDCs unless provision is made for S&D treatment in this context.

**Table 2: SNTD in the The EU Proposal**

Type of subsidies	S&D for developing countries	Conditions to make use of S&D
<ul style="list-style-type: none"> <li>• Subsidies that increase the marine fishing capacity of a fishing vessel or support the acquisition of equipment that increases the ability of a fishing vessel to find fish;</li> <li>• Subsidies that support the construction of fishing vessels or the importation of fishing vessels; and</li> <li>• Subsidies for the transfer of fishing vessels to other countries including through the creation of joint ventures with partners of those countries.</li> </ul>	Subsidies for fishing vessels which are used for subsistence fishing.	<ul style="list-style-type: none"> <li>• Stock(s) targeted for fishing is not overfished as recognized by Member or relevant RFMO (Unassessed stocks are presumed to be in an overfished condition)</li> <li>• Targeted fish stock is managed on the basis of the best available science to the Member, consistent with relevant international law, <u>and</u> generally accepted standards</li> <li>• Fishing capacity management plan</li> </ul>

Retrieved from: South Center (2017)- The WTO's Fisheries Subsidies Negotiations

The EU presented a proposal on prohibited subsidies and conditions for developing countries to use S&D treatment. They outline the types of subsidies as in table 2. The provision on S&D for developing countries suggested subsidies for fishing vessels which are used for subsistence fishing. However, conditions presented in order to make use of S&D do not seem favorable to developing countries. Some developing countries especially LDC's might not

have the capacity to comply with conditions such as fishing capacity management plans; use of best science methods and consistency with relevant international laws/agreements (some LDCs are not party to some of these laws/agreement). The EU's proposal is therefore perhaps not in the interest of developing countries as it seems to place oversight burden on these developing countries.

**Table 3: SNTD proposed by Indonesia**

Type of subsidies	S&D for developing countries	Conditions to make use of S&D
Subsidies for the purpose of fishing vessel construction, repair, or modernization, or gear acquisition or improvement, or fuel, or bait, or ice.	Subsidies for small scale fisheries (defined as boat length below 24 meters) that operate within the Member's EEZ	<ul style="list-style-type: none"> <li>• Fishery management plan that is effectively monitored and adequately enforced;</li> <li>• No adverse effect on fishery resources governed by the fisheries management plan;</li> <li>• No adverse effect on fishery resources of other members ; and</li> <li>• Control mechanism on fisheries subsidies to avoid overfishing and overcapacity.</li> </ul>
	Fisheries in the Member's own EEZ or rights held by Members in high seas fishing quota or any other right established by a RFMO or RFMA	<ul style="list-style-type: none"> <li>• Underexploited resources in Member's EEZ, or</li> <li>• Right to high seas fishing quotas or extra quota in RFMO</li> </ul>

Retrieved from: South Center (2017)- The WTO's Fisheries Subsidies Negotiations

The Indonesia proposal just like that of the EU also presented types of subsidies and conditions that will enable developing countries use S&D. Here again, the conditions are those that developing countries especially LDCs might not have the capacity to meet. Conditions such as an effectively monitored fisheries management plan requires expertise and capacity that LDCs might find difficult to comply with. This proposal and that of the EU seems to suggest higher standards for developing countries who are not in the position to adhere to these standards.

## Implications for Special and Differential Treatment

Special and Differential treatments offer some flexibilities in the WTO rules to LDCs, developing and transition countries. Fishing activities serve as a major source of livelihood for small scale fishermen in these developing countries; hence the need for S&D treatment to protect these activities. S&D can take several forms including technical assistance and

capacity building as well as an exclusion from certain rules in the world trading system. Although WTO members agree on some flexibilities for developing countries, the definition of small scale/artisanal fisheries is still largely varied. While some members such as Indonesia proposed the use of boat length below 24 meters, others including Argentina et al. proposed the definition be left to the jurisdiction of member countries which will apply according to national laws. Some members such as the EU even proposed to grant subsidies used for only subsistence farming in these developing and LDCs, however their definition of subsistence is quite limited as it excludes most fishing activities in developing/LDC countries' subsistence farming.<sup>31</sup>

A blanket subsidy while aiding these countries may further contribute to overfishing. As such, the EU proposed developing countries subsidies to be artisanal i.e. based on proof that such subsidies do not cause adverse effects on other members or fishery resources. It further called for a control mechanism to ensure that such subsidies do not lead to overcapacity or overfishing. Nonetheless, some developing countries particularly LDCs have argued that they have not in any way contributed to overfishing since subsidies that contribute to overfishing are mainly granted by richer countries to their fishing fleets.<sup>32</sup> However, the effects of such activities are detrimental to its residents who rely on small-scale fishing as a means of livelihood. They assert that given their position it is unfair to agree on disciplines on subsidies at the WTO that will be unfavorable to them. They therefore called for S&D treatments in particularly transition periods and technical

assistance so that they can be able to comply to these multilateral rules without hurting their citizens' source of livelihoods. Concerns on transparency and notification requirements have further been raised by parties; with parties noting that such requirements should not burden developing countries.

## Conclusion

The call for sustainable practices in fisheries occurred in the wake of increasing globalization and effects of related phenomena such as climate change and trade measures including subsidies. Harmful trade measures such as categories of subsidies in the fishing sector have contributed to depleting fish stocks over the years. Hence a call by the UN SDGs to prohibit subsidies and regulate activities that contribute to overfishing and capacity by the year 2020 deadline. Although fisheries negotiations have been around for a long time, members are determined to reach an agreement before the deadline, after failing to do so at the MC11 held in Argentina in December 2017.

Fisheries contribute to livelihoods and revenue of countries thus any agreement reached must make provision for S&D treatment for developing countries, to protect artisanal/subsistence fishing activities. In relation to this, developing countries proposed to exclude subsidies granted in their EEZs from any WTO subsidies discipline. Furthermore, any notification or transparency or management requirements must ensure not to burden developing countries given their limited capacities.

---

<sup>31</sup> South Center (2017)

<sup>32</sup> Ibid

Negotiators at the WTO have been working hard towards the SDG mandate with several meetings in Geneva, on specific issues to grasp a deeper understanding of the issues at stake. The members seek to take the negotiations a step further by zooming into full negotiations mode on text and to achieve an agreement by the 2019 deadline set at the MC11, even though MC12 is going to be held in June 2020. Nonetheless, the

question still remains about what happens with issues of enforceability if members are able to reach an agreement? Although countries willingly signed up to the SDGs and in extension the WTO mandate to ‘prohibit’ subsidies that contribute to overfishing and overcapacity, members will have to work hard towards adhering to any agreement reached at the WTO on the topic.



## **CUTS International, Geneva**

CUTS International, Geneva is a non-profit NGO that catalyses the pro-trade, pro-equity voices of the Global South in international trade and development debates in Geneva. We and our sister CUTS organizations in India, Kenya, Zambia, Vietnam, Ghana and Washington have made our footprints in the realm of economic governance across the developing world.

© 2018. CUTS International, Geneva.

This note is authored by Barbara Dzidzornu Adagblenya. CUTS’ notes are to inform, educate and provoke debate on specific issues. Readers are encouraged to quote or reproduce material from this paper for their own use, provided due acknowledgement of the source is made.

37-39, Rue de Vermont, 1202 Geneva, Switzerland

geneva@cuts.org • www.cuts-geneva.org

Ph: +41 (0) 22 734 60 80 | Fax: +41 (0) 22 734 39 14 | Skype: cuts.grc