



# Note

## The Equity Aspect of Fisheries Subsidies

By Saud Ahmed

### Summary

Fisheries subsidies, which lead to IUU fishing, and which contribute to overfishing and overcapacity leads to the fostering of inequality. Not only do they negatively affect the sustainability of the marine environment, but they also undermine the livelihoods of small scale and artisanal fisheries. This note examines how the issue of inequity has been addressed in the context of WTO negotiations on fisheries subsidies, including the latest draft Chair's text, and whether those provisions are effective and sufficient.

## Introduction

Fisheries is considered as the main resource for a certain population, the small-scale and artisanal fishermen, living in developing countries and Least Developed Countries (LDCs). However, governments are heavily subsidising the large-scale fishing firms which lead to the inequality between developing countries and LDCs, mostly composed of small-scale and artisanal fishermen and developed countries, majorly composed of large-scale fishing firms<sup>1</sup>. Moreover, in 2018, it has been estimated that the global fisheries subsidies were at 35.4 billion USD and 80% of those subsidies are given to large-scale fishing firms<sup>2</sup>.

## History of fisheries subsidies

In 2001, during the Fourth Ministerial Meeting held in Doha, the fisheries subsidies were brought on the WTO negotiating agenda under the Doha Round. The negotiations on this issue were entrusted to the WTO's Negotiating Group on Rules<sup>3</sup>. One of the negotiations' objectives was to clarify and improve WTO disciplines focused on fisheries subsidies<sup>4</sup>. Moreover, in 2005, in the Hong-Kong Ministerial Declaration, WTO Members pointed out that the Negotiating Group on Rules should be more restrictive on subsidies in the fisheries sector, including on prohibiting "certain forms of fisheries subsidies that contribute to overcapacity and overfishing"<sup>5</sup>. However, in 2007 the Doha Round negotiation reached an impasse and thus the negotiation on fisheries subsidies could not proceed much<sup>6</sup>. The situation substantively improved in the run up to

the MC11 in 2017, particularly due to the United Nations Sustainable Development Goals Target 14.6 (adopted by UN Members in 2015), that asked the WTO to put in place an agreement by end 2020 on "disciplines to eliminate subsidies for illegal, unreported and unregulated [IUU] fishing and to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, with special and differential treatment for developing and least developed countries integral to the negotiations"<sup>7</sup>. Unfortunately, MC11 in 2017 could not reach an outcome on fisheries subsidies.

The negotiations on fisheries subsidies were expected to be completed by MC12, originally scheduled for June 2020. But MC12 had to be postponed due to Covid 19 pandemic and is now to take place on 30 November-3 December 2021. WTO Members are aiming to reach an agreement on fisheries subsidies at MC12 though many issues still remain to be resolved. One of these is the issue of equity, i.e. any agreement on fisheries subsidies should be equitable for developing countries, particularly for their small-scale and artisanal fisheries while disciplining the subsidies for large-scale fishing.

## Problems occurring on the equity aspect of fisheries subsidies

Fisheries subsidies, which lead to IUU fishing, and which contribute to overfishing and overcapacity leads to the fostering of inequality. Indeed, not only subsidies in the fishing sector negatively affect the sustainability of the marine environment, but also undermine the livelihoods

<sup>1</sup> The World Bank, Economic and sector work, Hidden Harvest the Global Contribution of Capture Fisheries, <https://documents1.worldbank.org/curated/en/515701468152718292/pdf/664690ESW0P1210120HiddenHarvest0web.pdf>, (2012).

<sup>2</sup> A. Schuhbauer, D.J. Skerritt, N. Ebrahim, F. Le Manach, U.R. Sumaila, The Global Fisheries Subsidies Divide Between Small- and Large-Scale Fisheries, <https://www.frontiersin.org/articles/10.3389/fmars.2020.539214/full>, (2020).

<sup>3</sup> WTO, Factsheet: Negotiations on fisheries subsidies, [https://www.wto.org/english/tratop\\_e/rulesneg\\_e/fish\\_e/fish\\_intro\\_e.htm](https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_intro_e.htm); FishSec, Stalemate on

subsidies in WTO talks, <https://www.fishsec.org/2011/04/07/stalemate-on-subsidies-in-wto-talks/>, (2011).

<sup>4</sup> WTO, Negotiations on fisheries subsidies, [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>5</sup> Ibid.

<sup>6</sup> Y. Sakai, N. Yagi, U.R. Sumaila, Fishery subsidies: the interaction between science and policy, <https://link.springer.com/article/10.1007/s12562-019-01306-2>, (2019).

<sup>7</sup> WTO, Negotiations on fisheries subsidies, [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).

of small scale and artisanal fisheries<sup>8</sup>. Moreover, the small-scale and artisanal fisheries comprise 90% of all fishers but government subsidies disproportionately large-scale firms, which reduce the fishing costs of the latter firms<sup>9</sup>. For instance, according to an article, 78% of total fisheries subsidies are given to large-scale firms and operations<sup>10</sup>.

Moreover, it also creates inequality between developed countries and developing countries and LDCs. Indeed, of the estimated 120 million people employed in the fisheries sector, the livelihoods of 90% are in the small-scale fisheries and 97% of those workers live in developing<sup>11</sup>.

## Draft text on fisheries subsidies

On 30th of June 2021, the Chairperson of the Negotiating Group on Rues, presented a draft text on fisheries subsidies. The aim was to “point members towards the convergence needed to successfully conclude negotiations”<sup>12</sup>. In the Draft text, the provisions on special and differential treatment may be understood as addressing the equity aspects.

This note examines the issue of inequity in the context of fisheries subsidies, outlines what has been said on the equity aspect during the WTO negotiations on fisheries subsidies, how the draft Chair text of 30 June 2021 has addressed this, and whether those provisions in the draft text are effective and sufficient.

## The presence of inequality between developing and developed countries.

### Large vs small subsidy providers

As mentioned before, it has been estimated that the global fisheries subsidies were at 35.4 billion USD and only “five subsidising political entities (China, European Union, USA, Republic of Korea and Japan) [with high Human Development Index (HDI)] contribute 58% (USD 20.5 billion) of the total estimated subsidy”<sup>13</sup>. On the opposite side, countries with low HDI (Indonesia, Viet Nam, Morocco, Senegal and India) contribute only 6.8% of the 35.4 billion USD<sup>14</sup>.

Regarding the five entities who subsidize the most in the fishing sector, among the 20.5 billion USD used, around 12.7 billion USD (around 62%) are considered as capacity enhancing<sup>15</sup> and China, being the biggest subsidizer, contributes 7.26 billion USD as subsidies to the fishing sector of which 5.9 billion USD are considered as capacity enhancing. The European Union (EU) and USA subsidise, respectively, 3,8 billion USD and 3,43 billion USD, out of which 2.036 billion USD and 1.136 billion USD, respectively, are considered as capacity enhancing<sup>16</sup>.

It is important to note that detailed, up-to-date and comprehensive data on fisheries subsidies still remains a challenge. At a Chatham House seminar, the “lack of transparency on subsidy data and difficulty comparing reports from different organisations” was pointed out<sup>17</sup> that

<sup>8</sup> Swissinfo, Can WTO stop fishing subsidies and protect our marine environment?, <https://www.swissinfo.ch/eng/can-wto-stop-fishing-subsidies-and-protect-our-marine-environment-/46779478>.

<sup>9</sup> Stop funding overfishing, <https://stopfundingoverfishing.com/>.

<sup>10</sup> Ibid.

<sup>11</sup> The World Bank, Economic and sector work, Hidden harvest the Global Contribution of Capture Fisheries, <https://documents1.worldbank.org/curated/en/515701468152718292/pdf/664690ESW0P1210120HiddenHarvest0web.pdf>, (2012).

<sup>12</sup> WTO, Chair introduces revised fishing subsidies text to facilitate the 15 July ministerial meeting, [https://www.wto.org/english/news\\_e/news21\\_e/fish\\_30jun21\\_e.htm](https://www.wto.org/english/news_e/news21_e/fish_30jun21_e.htm), (2021).

<sup>13</sup> South Centre, Peter Lunenburg, Analysis of the Overcapacity and Overfishing Pillar of the WTO Fisheries Subsidies Negotiations, <https://www.southcentre.int/wp-content/uploads/2020/11/RP-122-REV.pdf>, (November 2020)

<sup>14</sup> U. R. Sumaila, N. Ebrahim, A. Schuhbauer, D. Skerritt, Y. Li, H.S. Kim, T.G. Mallory, V.W.L Lam, D. Pauly, Updated estimates and analysis of global fisheries subsidies, <https://www.sciencedirect.com/science/article/pii/S0308597X19303677#!>, (November 2019)

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> China Dialogue Ocean, Z. Zizhu, Decision time for China on fishing subsidies as WTO talks press ahead, <https://chinadialogueocean.net/14611-fishing-subsidies-decision-time-china-wto-talks-press-ahead/>, (2020).

caused difficulties to compare reports from different organisations. It was also also indicated that “it is impossible to assess the gravity of the problem without reliable subsidy data”<sup>18</sup>. This problem may explain why most of the data related to subtypes of fishery subsidies are dated from 2016 or before.

## Large firm vs small-scale and artisanal fisheries

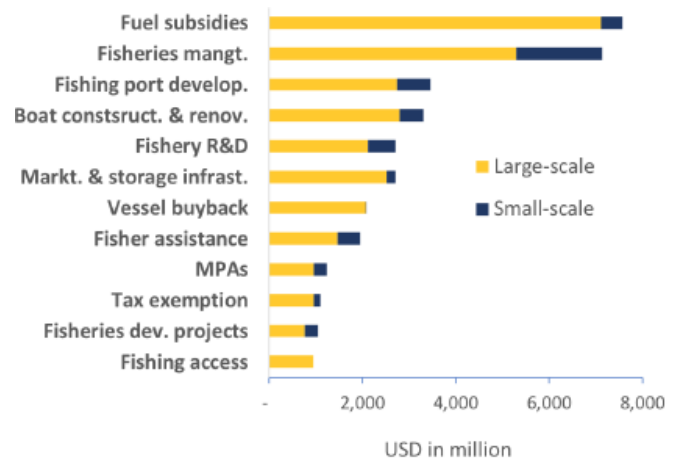
Before addressing the equity aspect of fisheries subsidies between small-scale and large-scale fisheries, it is important to note the major difference between the two in the fish sector. The main difference is that large-scale fisheries often substitute labour with the latest technology and high costs while the small-scale and artisanal fisheries are more labour intensive, and they are more likely to use small vessels<sup>19</sup>.

As mentioned before, in 2018, it has been estimated that the global fisheries subsidies were at 35.4 billion USD and nearly 84% of those subsidies are given to large-scale fishing firms<sup>20</sup>. In those global subsidies, 60% of those subsidies are considered as “capacity enhancing”<sup>21</sup>. On the other side, it has been thus estimated that governments only give 20% of their subsidies to the small-scale and artisanal fisheries in which 41% are capacity enhancing<sup>22</sup>. Moreover, the global fisheries subsidies are divided in several subtypes. For instance, the fuel subsidy, the most important subsidy, has been estimated, on the global level, around 7.2 billion USD in 2018 which correspond to 94% given to the large-scale fishing sector and only 6% to small-scale fishers<sup>23</sup>. Other examples would be the fishing port development

and the boat construction and renovation where the majority of the subsidies also go to the large-scale fisheries<sup>24</sup>. Finally, there are other global fisheries subsidy types that may be considered as capacity enhancing where the majority of global subsidies are also given to the large-scale fisheries. In other words, according to an article, 18.3 billion USD of global capacity enhancing subsidies are given to the large-scale fisheries<sup>25</sup>.

Even of the subsidy types that are considered beneficial, a large share also goes to the large-scale fisheries. For instance, for fisheries management, representing 20% of global subsidies in the fishing sector, 74% of the worldwide subsidies goes to the large-scale fishing while only 26% goes to the small-scale<sup>26</sup>. Another example would be the fishery research and development where 78% of the research and development’s subsidies are given to the large-scale<sup>27</sup>.

**Figure 1: Global fisheries subsidy per subtype (2018)**



Source: How global fisheries subsidies distribution impact small-scale fisheries, (2018)

<sup>18</sup> Ibid.

<sup>19</sup> The World Bank, Economic and sector work, Hidden Harvest the Global Contribution of Capture Fisheries, <https://documents1.worldbank.org/curated/en/515701468152718292/pdf/664690ESW0P1210120HiddenHarvest0web.pdf>, (2012).

<sup>20</sup> A. Schuhbauer, D.J. Skerritt, N. Ebrahim, F. Le Manach, U.R. Sumaila, The Global Fisheries Subsidies Divide Between Small- and Large-Scale Fisheries, <https://www.frontiersin.org/articles/10.3389/fmars.2020.539214/full>, (2020).

<sup>21</sup> A. Schuhbauer, U.R. Sumaila, How global fisheries subsidies distribution impact small-scale fisheries, (2018).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

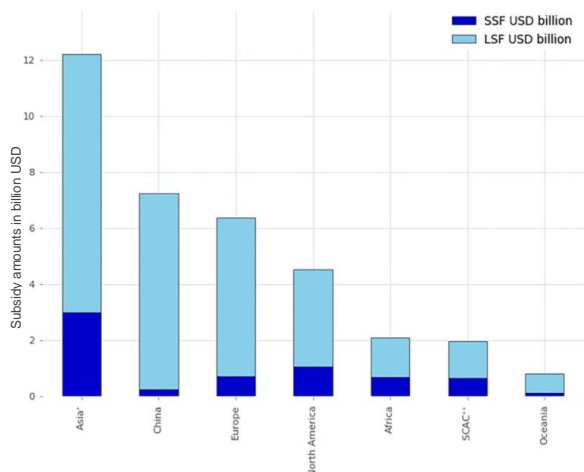
<sup>25</sup> A. Schuhbauer, D.J. Skerritt, N. Ebrahim, F. Le Manach, U.R. Sumaila, The Global Fisheries Subsidies Divide Between Small- and Large-Scale Fisheries, <https://www.frontiersin.org/articles/10.3389/fmars.2020.539214/full>, (2020).

<sup>26</sup> A. Schuhbauer, U.R. Sumaila, How global fisheries subsidies distribution impact small-scale fisheries, (2018).

<sup>27</sup> Ibid.

Finally, the figure 2 shows that several regions and countries give the majority of their fisheries subsidies to the large-scale fisheries. Indeed, for example, the Asian region (excluding China) and China give, respectively, only 25% and 4% of their subsidies to the small-scale fisheries<sup>28</sup>.

**Figure 2: Subsidy amounts by major region broken down into SSF and LSF for 2018**



Source: The Global Fisheries Subsidies Divide Between Small- and Large-Scale Fisheries, (2020)

## What has been said on the equity aspect during negotiations?

During the negotiations in the WTO, certain issues regarding the equity aspect were raised such as the fact that “production occurs not only in national waters but in the open seas and through contracts to capture fish in third countries’ waters”<sup>29</sup>, the lack of data from many developing countries and LDCs, the large part of fishing

fleets, for developing and LDCs, which are “subsistence or artisanal in nature”<sup>30</sup>, and whether the traditional S&DT provisions would be useful to developing countries and LDCs. Moreover, some countries, like USA, gave their positions regarding certain provisions. Indeed, the latter stated that they will approve the S&DT in an agreement if they are “limited to countries with an actual need”<sup>31</sup>.

Moreover, WTO Members proposed a cap-based approach on certain fisheries subsidies. Indeed, according to the proposition of China, not only countries should cap certain of their fisheries subsidies, but they should also notify all information pertaining to their base for capping and approach for capping<sup>32</sup>. Moreover, it has been discussed that there should be appropriate S&DT for developing countries and LDCs and LDCs should be exempted from capping<sup>33</sup>.

Finally, regarding the equity aspect, during the negotiations, India proposed that some prohibitions on subsidies, in respect of illegal, unreported, and unregulated fishing and overfishing and overcapacity, shall not apply for some subsidies of developing countries and LDCs<sup>34</sup>. Finally, India proposed that developed countries and developing countries who are declaring themselves in a position to help, should provide “targeted technical assistance and capacity building assistance to developing countries including LDCs for the purpose of implementation of the disciplines”<sup>35</sup>.

<sup>28</sup> A. Schuhbauer, D.J. Skerritt, N. Ebrahim, F. Le Manach, U.R. Sumaila, The Global Fisheries Subsidies Divide Between Small- and Large-Scale Fisheries, <https://www.frontiersin.org/articles/10.3389/fmars.2020.539214/full>, (2020).

<sup>29</sup> T.P. Stewart, Current Thoughts on Trade, Fisheries Subsidies – Will the WTO Members Reach Agreement Before June 2020?, <https://currentthoughtsontrade.com/2020/01/13/fisheries-subsidies-will-the-wto-members-reach-agreement-before-june-2020/>, (2020).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> WTO, A cap-based approach to address certain fisheries subsidies that contribute to overcapacity and overfishing, communication from China <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/TN/RL/GEN199.pdf&Open=True>, (2019).

<sup>33</sup> Ibid.

<sup>34</sup> WTO, Article [X]: Special and differential treatment, Communication from India, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/TN/RL/GEN200.pdf&Open=True>, (2019).

<sup>35</sup> Ibid.

## What does the fisheries subsidies draft text provide to address the equity aspect?

### Special and differential treatment (S&DT)

#### ● Definition and types of S&DT

S&DT are provisions present in WTO Agreements which give developing countries and LDCs certain flexibilities and exemptions on the one hand, and “give developed countries the possibility to treat developing countries more favourably than other WTO Members” on the other<sup>36</sup>. These special provisions comprise:

- longer time periods to implement Agreements and commitments,
- lesser commitments under certain agreements,
- “measures to increase trading opportunities for developing countries,
- provisions requiring all WTO members to safeguard the trade interests of developing countries,
- support to help developing countries build the capacity to carry out WTO work, handle disputes, and implement technical standards, and
- provisions related to least-developed country (LDC) Members”<sup>37</sup>.

#### ● S&DT provided in the draft text

Articles 3.8 and 4.4 of the Draft text state that “for a period of [2] years from the date of entry into force of this [Instrument], subsidies granted or maintained by developing country Members, including least-developed country (LDC)

Members, for low income, resource-poor and livelihood fishing or fishing related activities up to 12 nautical miles measured from the baselines shall be exempt from actions based on Articles 3.1 [and 4.1] and 10 of this [Instrument]”<sup>38</sup>. Moreover, The Draft text contains two versions of Article 5.5. Indeed, the first version lit.a and lit.b points that the prohibition under Article 5.1 of the Draft shall not apply to subsidies granted by LDCs and developing countries for fishing or fishing related activities within their territorial sea. In lit.c, it points out all the requirements that are needed to apply subsidies that are prohibited by Article 5.1 of the Agreement.

The second version of Article 5.5 (a) proposed the same clause for LDC as the first version. However, the second version (5.5(b)) states that “the prohibition under Article 5.1 shall not apply to subsidies granted or maintained by developing country Members for low income, resource-poor and livelihood fishing or fishing related activities up to 12 nautical miles measured from the baselines”<sup>39</sup>. Moreover, for other subsidies than those mentioned previously, a developing country may grant or maintain the subsidies mentioned in 5.1 for fishing and fishing related activities within its Exclusive Economic Zone (EEZ) and the area of competence of a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A) for a maximum of 5 years after the entry into force of the Agreement. However, to invoke this period of time, the developing country must inform the Committee in writing before the date of entry into force of the Agreement. If a developing country want to apply the subsidies beyond 5 years, it needs to fulfil the requirement mentioned in Article 5.5(d) (i and ii) of the Agreement and it must, not later than one year before the expiry of the 5 years, consult the Committee, which will determine whether an extension is justified.

<sup>36</sup> WTO, Special and differential treatment provisions, [https://www.wto.org/english/tratop\\_e/devel\\_e/dev\\_special\\_differential\\_provisions\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm).

<sup>37</sup> Ibid.

<sup>38</sup> WTO, Negotiating Group on Rules – Fisheries Subsidies, Revised Draft Consolidated Chair Text, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/TN/RL/W276R1.pdf&Open=True>, (June 2021).

<sup>39</sup> Ibid.

When it comes to LDCs, besides Articles 3.8 and 4.4 of the Draft text, the subsidies that are prohibited under Article 5.1 do not apply to them (both versions of Article 5.5). Moreover, the agreement contains a specific provision which addresses the application of all provisions related to LDCs members to those LDC members that may graduate out of the category. Indeed, Article 6.1 states that “Provisions relating to LDC Members shall continue to apply for a transitional period of [X] years after the entry into force of a decision of the UN General Assembly to exclude a Member from the "Least Developed Countries" category”<sup>40</sup>.

Finally, there is a technical assistance and capacity building provision which shall be provided to developing countries and LDCs in order to implement the obligations under this Agreement. To support the latter statement, the draft also points out the establishment of a voluntary WTO funding mechanism with the cooperation of several international organizations such as the FAO and the International Fund for Agricultural Development (IFAD) (Article 7).

## **Are those provisions sufficient to address the equity aspects?**

### **Overcapacity and overfishing**

As mentioned in section II, the majority of subsidies are given to large-scale firms and the majority of these subsidies are considered as capacity-enhancing. Moreover, a big amount of these capacity-enhancing subsidies is used for fuel subsidies. Prohibiting those fuel subsidies (Article 5.1(c)) will not only reduce global subsidies, but it will also reduce the amount of long-distant fishing and perhaps it will also reduce the amount of large-scale motorized vessels. Moreover, other provisions, such as Article 5.2 and 5.3 of the Draft text also prohibit long-distant fishing. Furthermore, in Article 5.1.(a) and (b) of the Agreement, subsidies to construction,

renovation of boats and subsidies to the purchase of machines and equipment for vessels will also reduce future construction of large-scale boats.

Finally, the Draft text provided two alternatives of exemptions from prohibition of subsidies provided by Article 5.1 of the Draft text for developing countries and LDCs. The first alternative contained an exemption of the subsidies for LDCs and subsidies for developing countries' vessels for fishing or fishing related activities within their territorial sea but not within their EEZ and the area of competence of RFMO/A and the prohibition of subsidies under Article 5.1 only apply in a situation where the four criteria are fulfilled. In other words, if the GNI per capita of a developing country or a LDC Member do exceed by 5000\$ (based on constant 2010 US dollars) for three consecutive years, the annual global marine capture fish production does exceed 2%, the Member does engage in distant water fishing and that the contribution from Agriculture, Forestry and Fishing to the Member's annual GDP is less than 10% for the most recent three consecutive years, the Member shall apply the prohibition under Article 5.1 of the Draft Agreement.

In the second alternative, there are several exemptions. The first one, which is permanent, is for LDCs Members. The second exemption, which is also permanent, apply to developing countries for low income, resource-poor and livelihood fishing or fishing related activities up to 12 nautical miles measures from the baselines. Finally, the third exemption would be for developing countries' vessels within their own EEZ and the area of competence of a relevant RFMO/A but this time it is only for 5 years. Moreover, there is a possibility to extend if the criteria of Article 5.5 (d) are met and if the Committee approves the extension.

The first alternative seems more effective and equitable because it restricts developed countries as well as those developing countries (such as

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<sup>40</sup> Ibid.

China and some other developing countries<sup>41</sup>), who fulfil the criteria.

## Other provisions

Beside the provisions related to prevent certain subsidies, the draft also contained a special provision for LDCs countries (article 6) which will extend the LDCs' flexibilities and a technical assistance and capacity building clause (Article 7) which will should help developing countries and LDCs in the implementation of the final agreement.

## Need for more and effective provisions to fully address the equity aspects

It can be concluded that while the draft text of 30 June included some provisions, including through S&D for developing countries and LDCs, to address the equity aspects, more is needed in that respect. The equity aspects should be addressed by appropriately strengthening the draft text in two ways. First, and very importantly, the fisheries subsidies agreement must strictly, comprehensively and effectively discipline the subsidies for largescale fishing. Secondly, it should provide greater flexibilities for small-scale and artisanal fisheries in developing countries and LDCs.



## CUTS International, Geneva

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<sup>41</sup> IISD, WTO Negotiations on Fisheries Subsidies Update: What's the state of play?.

<https://www.iisd.org/system/files/2021-06/wto-negotiations-fisheries-subsidies-update-state-play.pdf>, (2021).