



# Note

## WTO Negotiations on Fisheries Subsidies

An Overview of Artisanal and Small-scale Fisheries issues in the Context of Developing and Least Developed Countries

By Chidochashe Ncube

### Summary

With the adoption of SDG target 14.6, the global community has endeavoured to prohibit and eliminate certain forms of fisheries subsidies which contribute to overcapacity and overfishing, while recognising that WTO negotiations towards this end should integrate special and differential treatment for developing and least developed countries. Against this backdrop, this note provides an overview of artisanal and small-scale fisheries issues in the context of developing and least developed countries.

## Introduction

Small-scale and artisanal fisheries play a paramount role in developing and Least Developing countries (LDCs) in providing fish and fishery products.<sup>1</sup> Many artisanal fisheries communities are characterised by high levels of poverty and fish becomes vital in providing not only nutrition but also a source of livelihood. Of the estimated 120 million people employed in the fisheries sector, 90% are in the small-scale fisheries and 87% are in developing and least developed countries.<sup>2</sup>

Over the years, marine resources have been overexploited leading to pertinent questions relating to fish trade, ecological sustainability and consumption patterns.<sup>3</sup> With a billion people directly dependent on fish for food, a hundred million people dependent on fishing for their livelihoods and a projected rise in demand globally for fish in decades to come, the sobering reality is that the great majority of the world's most important fisheries have been fished to - and in many cases - well past their biological limits.<sup>4</sup>

In 2020, the Food and Agriculture Organisation of the United Nations (FAO) carried out research on levels of marine exploitation which found *inter alia* that almost 60% of the assessed stocks are fully exploited and 34% are fished at unsustainable levels.<sup>5</sup> A number of factors can be attributed to the overexploitation of marine resources but there has been consensus on the role that fisheries subsidies play in exacerbating the situation.

## Fisheries Subsidies and Impacts on Fisheries

Fisheries subsidies are generally payments made by governments towards fishing interests.<sup>6</sup> These subsidies allow fleets to operate where it would otherwise be unprofitable, leading to overfishing and unsustainable fishing practices.<sup>7</sup> The following, are often cited examples of fisheries subsidies; export promotion programs, price supports for fish and fish products, construction or maintenance of port facilities, and, grants, low-cost loans or other financial benefits to support the transportation or processing of fish or fish products.

It is imperative to note that not all subsidies are harmful. Some subsidies are beneficial and these include government subsidies for fisheries research and development. They aim to improve the methods of fish catching and processing to enhance the fisheries stock through the advancement of technology.<sup>8</sup> Another cluster of beneficial fisheries subsidies go towards supporting artisanal and small-scale fisheries. These aim at enhancing crew safety, fish product processing by local communities and rehabilitation of ecosystems.<sup>9</sup>

FAO posits that, very often, state funding keeps unprofitable fishing fleets at the sea and that has led to the deterioration of marine resources.<sup>10</sup> Global fisheries subsidies are estimated to be ranging from USD 14 billion to USD54 billion annually and in most cases are being provided by a few countries.<sup>11</sup> In 2018, the global estimates for subsidies were at USD 35.4 billion and only

<sup>1</sup> United Nations Conference on Trade and Development Conference on challenges and opportunities for small-scale fisheries in Fish Trade. Food and Agriculture- UNCTAD session at the World Trade Organisation Public Forum, 2017- Trade Behind Headlines, available at

<https://unctad.org/meeting/challenges-and-opportunities-small-scale-fishers-fish-trade-fao-unctad-session-wto-public>

<sup>2</sup> UNCTAD (2017).

<sup>3</sup> Bahety, S. Mukiibi, J. (2017). "WTO Fisheries Subsidies Negotiations: Main Issues and Interests of Least Developed Countries". Geneva. CUTS International, Geneva

<sup>4</sup> Schorr, DK. (2004). 'Healthy Fisheries, Sustainable Trade: Crafting new rules on fishing subsidies in the World Trade

Organisation.' World Wildlife Fund Position Paper and Technical Resources. World Wildlife Fund

<sup>5</sup> Tipping A & Irschlinger T. (2020). 'World Trade Organisation Negotiations on Fisheries Subsidies: What is the state of play?' GSI Policy Brief. IISD, Global Subsidies Initiative.

<sup>6</sup> Schorr, DK. (2004) 2.

<sup>7</sup> Schorr, DK (2004) 2.

<sup>8</sup> Bahety, S and Mukiibi, J (2017) 16.

<sup>9</sup> Bahety, S and Mukiibi, J (2017) 16.

<sup>10</sup> World Trade Organisation Factsheet. 'Negotiations on Fisheries Subsidies'. World Trade Organisation, available at [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)

<sup>11</sup> World Trade Organisation Factsheet.

19% of that was channelled into the small-scale fisheries sector. Assessing the levels of subsidisation per active fisher globally, a fisher in the large-scale fisheries receives disproportionately 3.5 times more subsidies than a fisher in the small-scale fisheries.<sup>12</sup> Just like agricultural subsidies, fisheries subsidies put developing countries and LDCs at a competitive disadvantage as they are usually outspent by major economies when it comes to funding the fisheries sector.<sup>13</sup> This has market-distorting effects in that subsidised fisheries products are guaranteed of an increased share of domestic and international markets. It is for these adverse effects that the International community launched discussions on fisheries subsidies.

The global discussion on fisheries subsidies started with FAO in the early 1990s. In 1995, a conference was held in Mexico on Responsible Fishing whose overarching argument was that subsidies are a major factor in the creation and promotion of excess fishing capacity.<sup>14</sup> During the conference, FAO Member States unanimously adopted the Code of Conduct for Responsible Fisheries which is a fundamental document that sets out globally agreed principles and standards for the use of fisheries and aquaculture resources.<sup>15</sup> The Code has been the basis for international, regional and national efforts towards conservation of marine resources.

The discussions on fisheries subsidies at the World Trade Organisation (WTO) started in 2001 at Doha with the adoption of fisheries subsidies on the negotiating agenda by trade Ministers. The mandate was further elaborated in 2005 at the Hong Kong Ministerial Conference which included a call for the prohibition of certain forms of fisheries subsidies that contribute to

overfishing.<sup>16</sup> At the 11<sup>th</sup> Ministerial Conference (MC11) in Buenos Aires, held in 2017, WTO Members decided on a work programme to conclude negotiations and adopt an agreement on fisheries subsidies, by the 12<sup>th</sup> Ministerial Conference,<sup>17</sup> which would be in line with target 14.6 of the Sustainable Development Goals (SDGs).<sup>18</sup> The Chair at that time released the first ever draft of the text that contained a set of prohibited subsidies, new disciplines for actionable subsidies, general exceptions and special and differential treatment.<sup>19</sup> Although the text was a huge milestone in the negotiations, it however failed to gather consensus among the WTO Members.

SDG 14 which calls on states to conserve and sustainably use the oceans, seas and marine resources for sustainable development provided for an impetus with targets 14.4 and 14.6. Target 14.4 calls for states [by 2020] to effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics. The Target is further supplemented by Target 14.6 which calls for states 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, recognising that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organisation fisheries subsidies negotiations. The negotiations at the

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<sup>12</sup> Schulibauer A, Skerritt D.J, Ebrahim N, Le Manach F and Sumaila U.R (2020). 'The Global Fisheries Subsidies divide between Small and Large Scale Fisheries' available at <https://www.frontiersin.org/articles/10.3389/fmars.2020.539214/full>

<sup>13</sup> Schorr D.K (2004) 10.

<sup>14</sup> Bahety, S and Mukiibi, J (2017) 14.

<sup>15</sup> Food and Agriculture Organisation of the United Nations (2020). The State of World Fisheries and Aquaculture, 2020. Sustainability in Action. Rome

<sup>16</sup> World Trade Organisation. Negotiations on Fisheries Subsidies, available at [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)

<sup>17</sup> MC12 was originally scheduled to be held before the deadline of end 2020 under the SDG 14.6.

<sup>18</sup> World Trade Organisation Negotiations on Fisheries Subsidies.

<sup>19</sup> Tipping A & Irschlinger T. (2020) 4.

WTO are thus aimed at delivering on the aforementioned SDG and targets.

## WTO Negotiations on Fisheries Subsidies: Issues Pertaining to Artisanal Fisheries

### Definition of artisanal fisheries

There is no universally agreed definition of artisanal and small-scale fisheries. The definitional question is very critical. This is so because a clear definition will be the means to delineate the potential scope of any special and differential treatment for artisanal fisheries under the agreement.

The Communication from the Chair on Fisheries Subsidies Working Document makes proposals for the definition of artisanal fisheries, small-scale fisheries and subsistence fisheries. Artisanal fisheries are defined as those which operate within a Member's territorial waters and mostly close to shore, use vessels which utilize primarily manual gear, and are operated by individual fishermen or family members [for the purpose of subsistence or local trade]<sup>20</sup> In a similar vein, small-scale fisheries activities shall be defined as fishing activities which use vessels that are below [24 meters]<sup>21</sup> in length [and/or [x] tonnage,] [provided the said limit is codified either in toto or in essence in the national laws or regulations of a Member at the time of adoption of this instrument]<sup>22</sup>. Lastly, subsistence fisheries are defined as fishing activities undertaken by an individual household for consumption by the members of that household and kin of the fishers

as opposed to fishing activities undertaken for commercial purposes. Nevertheless, part of the fish caught can be sold or exchanged for other goods or services.<sup>23</sup> The definitions within the Communication from the Chair are based on a number of proposals that were put forward by Members, as further explained below.<sup>24</sup>

The European Union proposed that subsistence fishing be defined as fishing activities undertaken by an individual household for consumption by the members of that household and kin of the fishers as opposed to fishing undertaken for commercial purposes. Nevertheless, part of the fish caught can be sold or exchanged for other goods and services.<sup>25</sup> Indonesia proposed that subsistence fishing be defined as those which operate within its territorial waters and mostly close to the shore, use vessels which utilise primarily manual gear, and operated by individual fishermen or family members for the purpose of subsistence of local.<sup>26</sup> For the African, Caribbean and Pacific Group of States, semi-industrial, small commercial, artisanal or subsistence fishing are to be defined according to national laws and/international agreements to which the Members are party.<sup>27</sup>

During one of the meetings, the United States in an oral response to Japan defined artisanal fisheries as, 'small-scale fisheries that employ labour intensive harvesting, processing and distribution technologies to exploit marine and inland fishery resources. Such fisheries typically target local rather than export markets.'<sup>28</sup> Small Island Developing States (SIDS) consistently referred to artisanal fisheries in their submissions as small-scale fisheries that are local in nature.<sup>29</sup>

<sup>20</sup> World Trade Organisation, Fisheries Subsidies Working Document- Communication from the Chair TN/RL/W/274/ Rev. 6, 14 November 2018.

<sup>21</sup> The brackets indicate no agreed position as yet.

<sup>22</sup> World Trade Organisation, Fisheries Subsidies Working Document- Communication from the Chair TN/RL/W/274/ Rev. 6, 14 November 2018.

<sup>23</sup> World Trade Organisation, Fisheries Subsidies Working Document- Communication from the Chair TN/RL/W/274/ Rev. 6, 14 November 2018.

<sup>24</sup> The square brackets in the text denotes that there is no consensus among all WTO Members on the language in these parts.

<sup>25</sup> Tipping A. (2020). Challenges and Opportunities for Small-Scale Fisheries in International Trade: Addressing Small-Scale fishing in subsidy disciplines available

<https://unctad.org/system/files/non-official-document/dtc-ted-28082017-wto2-ICTSD-Tipping.pdf>

<sup>26</sup> Tipping A, (2020) 3.

<sup>27</sup> Tipping A (2020) 4.

<sup>28</sup> TN/RL/M/8 (Meeting Summary, 10 June 2003), p.9.

<sup>29</sup> TN/RL/GEN/57/Rev.1 (Fiji, Jamaica, Papua New Guinea, and the Solomon Islands, 4 August 2005), p.4

The first ever elaborated definition was submitted by Brazil in July 2005. Brazil proposed that artisanal fishing be defined as follows;

- a) ... fisheries activities performed at in-shore basis with non-automatic net-retriever devices;
- b) ... activities carried out on an individual basis (including, but not necessarily, the family members);
- c) The basic scope of the activities encompasses both family livelihood and a small profit trade; and there is no employer-employee relationship on the activities carried out.<sup>30</sup>

The aforementioned definitions were proposed to identify a set of interests and people likely to need particular treatment under the new WTO fishing subsidy disciplines.<sup>31</sup> The goal basically is to also preserve rights of Members that would need to subsidise artisanal fisheries for development. This can be achieved by defining small-scale and artisanal fisheries in a manner that covers the needs of the communities in LDCs and developing countries that are highly dependent on the sector for livelihood as opposed to including those fisheries from developed economies that engage in fishing activities for commercial purposes.

From the proposed definitions, it is clear that artisanal fisheries are basically small, underdeveloped and very often severely impoverished fishing communities whose immediate survival depends on their ability to continue benefiting from local fisheries that in many cases are centuries old.<sup>32</sup>

India submitted a proposal to the WTO on exempting artisanal fisheries from the subsidies prohibition by providing a blanket relief for fishing in territorial waters which was included in the draft text by the Chair of the negotiations.<sup>33</sup> For India, the rationale is since it is mostly small fishers that operate close to shore and do not venture out of territorial water, defining all fishers that fished within the area as artisanal was a more pragmatic way of extending the exemption from subsidy prohibition rather than examining the profile of individual fishers.<sup>34</sup> In January 2021, Ecuador submitted a proposal to counter India's suggestion of blanket exemptions for those fishing in territorial waters. The proposal is to define what qualifies as artisanal fishing and would therefore be exempted from prohibition on subsidies related to overfished stocks and overfishing and overcapacity.<sup>35</sup>

Some Members backed Ecuador's proposal on the need to have some basic parameters for fishers to qualify as artisanal and hence allowed to continue with the subsidy programme.<sup>36</sup> The other Members backed the proposal by India to stick to the consolidated text based definition. The Consolidated text where the territorial seas defined as 12 nautical miles from the shore, of developing countries and LDCs would instead be, 'carved out subsidy prohibitions' in Chapters on IUU fishing, overfished stocks, and overfishing and overcapacity.<sup>37</sup> India also opposed the proposal by Ecuador on the basis that it would apply to the fishers in developed countries as well and pointed out that its own proposal very well took care of the need to ensure that only small fishers were exempted.<sup>38</sup>

<sup>30</sup> TN/RL/GEN/56 (Brazil, 4 July, 2005), p.2, TN/RL/GEN/79 (Brazil, 16 November 2005) p. 3.

<sup>31</sup> Schorr, DK. (2005) 'Artisanal Fishing: Promoting Poverty Reduction and Community Development Through New WTO Rules on Fisheries Subsidies.' An Issue and Options Paper. Geneva. United Nations Environment Programme.

<sup>32</sup> Schorr DK, (2005) 1.

<sup>33</sup> Sen A. 'World Trade Organisation Members debate definition of artisanal fishers to be exempted from subsidy ban.', 28 January 2021

<https://www.thehindubusinessline.com/economy/agri->

[business/wto-members-debate-definition-of-artisanal-fishers-to-be-exempted-from-subsidy-ban/article33687114.ece](https://www.thehindubusinessline.com/economy/agri-business/wto-members-debate-definition-of-artisanal-fishers-to-be-exempted-from-subsidy-ban/article33687114.ece)

<sup>34</sup> Sen A, (2021).

<sup>35</sup> International Institute for Sustainable. 'World Trade Members Resume Negotiations on Fisheries Subsidies.' 1 February 2021 available <https://sdg.iisd.org/news/wto-members-resume-negotiations-on-fisheries-subsidies/>

<sup>36</sup> Sen A, (2021).

<sup>37</sup> International Institute for Sustainable Development (2021).

<sup>38</sup> Sen A, (2021).

## Positions on Subsidies as they relate to Artisanal Fisheries

Artisanal fisheries are significant in that they provide direct and indirect employment to millions of people globally and are also a source of nutritious food to billions of people.<sup>39</sup> They are crucial to global food security and offer development pathways to contribute to a more prosperous, peaceful and equitable world.<sup>40</sup> Even though there is widespread consensus on the need to prevent or prohibit harmful fishing practices and subsidies that lead to overfishing, it remains an important consideration for WTO Members to ensure that the negotiated rules do not prevent governments from investing in their underdeveloped artisanal fisheries. Proponents for subsidising artisanal fishing have raised the following justifications *inter alia*;

a) Food security: Fisheries are critical for food security and human nutrition. In most developing countries and LDCs, fish provide for more than half of human protein needs and most of the fish comes from artisanal and small-scale fisheries. For instance, in Tanzania, fish consumption contributes to more than 30% of the total animal protein intake.<sup>41</sup> Research has also found that in Ghana, the addition of fish powder to traditional maize porridge during weaning improves infant growth due to a number of micronutrients that are found in fish.<sup>42</sup> It is for that reason that FAO has constantly noted the need for increasing the contribution by artisanal fisheries through purposeful government action including subsidies.<sup>43</sup>

b) Poverty alleviation: Most artisanal fisheries

communities are often underdeveloped and poor yet they provide employment for millions of people globally. According to FAO estimations in 2018, about 38 million people globally were employed in the fisheries sector and 14% of them are women.<sup>44</sup> For instance, in West Africa, artisanal fisheries have tremendously expanded in the last three decades and in Senegal, the fisheries have increased 6-fold.<sup>45</sup> The sector employs more than 82 000 fishers in the country and is a major contributor to the Gross Domestic Product (17%).<sup>46</sup> Although the sector employs a sizeable number of people, their living conditions remain appalling. As a result, governments are often implored to assist artisanal fishers with meeting basic needs and employment stability.<sup>47</sup>

c) Preservation of fishing cultures and lifestyles: It has often been argued that some governments are interested in subsidising the artisanal fisheries sector as a means to maintain certain cultural practices and this motive is mostly common in developing countries and LDCs.<sup>48</sup> In Piriapolis (Uruguay) and Paraty (Brazil), artisanal fishers view fishing as a way of life rather than just a means of survival and it is incumbent upon the governments to safeguard that freedom of fishing and inherent cultural satisfaction.<sup>49</sup>

It is for these reasons that there is a case to ensure that artisanal fisheries are not inadvertently harmed by the rules on fisheries subsidies.

It is also important to note that a number of harmful subsidies have been posing a real threat

<sup>39</sup> Food and Agriculture Organisation (2020) 17.

<sup>40</sup> Food and Agriculture Organisation (2020) 92.

<sup>41</sup> FAO-UNCTAD Session at the WTO Public Forum presentation notes by Julian Mukiibi, CUTS International, Geneva available at <https://unctad.org/system/files/non-official-document/ditc-ted-28082017-wto2-CUTS-Mukiibi.pdf>

<sup>42</sup> USAID. 'Fishing for Food Security: The importance of Wild Fisheries for Food Security and Nutrition, April 2016. United States Agency for International Development.

<sup>43</sup> Schorr D.K. (2005) 19.

<sup>44</sup> Food and Agriculture Organisation (2018) 36.

<sup>45</sup> World Wide Fund for Nature (2020) West African Marine Ecoregion project: Supporting local fisheries. 'Sustainable artisanal fisheries- increasing their catch'

<sup>46</sup> Food and Agriculture Organisation Factsheet. Senegal Artisanal Fisheries Sub-sector: Fishery production system report of 2008.

<sup>47</sup> Food and Agriculture Organisation (2018) 36.

<sup>48</sup> Schorr D.K (2005)20.

<sup>49</sup> Johnson S.D. (2012). 'Artisanal fishing as an undesirable way of life? The implications for governance of fishers' well-being aspirations in coastal Uruguay and South-eastern Brazil' *Marine Policy* 37 (1): 37-44

to artisanal fisheries. UNEP published a study for the prohibition of fishing subsidies which contained empirical evidence showing that artisanal fisheries in Senegal had been affected by subsidies.<sup>50</sup> Schorr argues that there has always been less emphasis on the contribution that subsidies in artisanal fisheries make towards unsustainable fishing practices albeit being small.<sup>51</sup> The responsibility for the depletion of many of the world's major fisheries is undoubtedly borne by highly mechanised industrial fleets.<sup>52</sup>

During the various deliberations at the WTO, a common theme in a number of submissions by proponents of the agreement on fisheries subsidies is that artisanal fisheries are not the intended focus of the fisheries subsidies disciplines.<sup>53</sup> This is mainly because artisanal fisheries tend to use traditional fishing methods that are more sustainable as compared to industrial fisheries. The United States indicated at the seventh session of the Negotiating Group on Rules (which is tasked with the negotiations on fisheries subsidies at the WTO) that artisanal fisheries were unlikely to cause overcapacity and overfishing and were therefore not an appropriate object of the increased disciplines on fisheries subsidies.<sup>54</sup>

It has also been put forward that subsidies to artisanal fisheries are likely not to be harmful and also that they may be important for alleviating poverty and fostering development. This argument was raised by Japan and supported by Chile and Antigua and Barbuda.<sup>55</sup> Chile went further to propose that subsidies to small-scale fisheries be left in the amber 'actionable' category rather than the red 'prohibited' category.<sup>56</sup>

## Special and differential treatment

The issue of artisanal fishing has also been significant with regards to the provision on special and differential treatment. The Chair of the Negotiating Group provided a draft text which offered special and differential treatment to LDCs, artisanal fisheries and vessels under 10 meters and fishing in Member States' own Exclusive Economic Zones (EEZs).<sup>57</sup> The text however created divergent views among members such as the European Union, the US and Japan which were divided on scope and coverage.<sup>58</sup> The African, Caribbean and Pacific Group of States (ACP) submitted a proposal that focused narrowly on LDCs and Small and Vulnerable Economies (SVE) particularly for artisanal fishing and fishing inside of Member States' own EEZs or within the bounds of regional agreement quotas.<sup>59</sup> The position was influenced by the fact the WTO disciplines should target primarily industrial fishing on a large scale since they are the main perpetrators of overcapacity and IUU fishing. Disciplines that WTO Members agree on should not hinder LDCs and SVEs from developing their sectors bearing in mind that the sector is mainly saturated by artisanal and small-scale fisheries.

The East African Community's (EAC) position to the negotiations has been that special and differential treatment is critical for LDCs hence any disciplines at multilateral level should take into account the livelihoods of people dependent on fisheries.<sup>60</sup> The ACP group is of the view that disciplines prohibiting subsidies that adversely affect fish stocks that lead to overfishing and IUU fishing should apply to all Members without exception.<sup>61</sup> However, there should be sufficient room for policy flexibility for LDCs to develop their

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<sup>50</sup> UNEP 2004, Porter, *Analysing the Resource Impact of Fisheries Subsidies: A Matrix Approach*. UNEP as cited by Schorr D.K. (2005) 15.

<sup>51</sup> Schorr D.K. (2005) 4.

<sup>52</sup> Schorr D.K. (2005) 4.

<sup>53</sup> Schorr D.K. (2005) 5.

<sup>54</sup> World Trade Organisation. TN/RL/M/2 (Meeting Summary, 11 June 2002); TN/RL/W/77 (United States, 19 March 2003).

<sup>55</sup> TN/RL/W/11 (Japan, 2 July 2002); TN/RL/W/115 (Chile, 10 June 2003) and TN/RL/W/136 (Antigua and Barbuda, et al, 14 July 2003).

<sup>56</sup> TN/RL/W/115 (Chile, 10 June 2003).

<sup>57</sup> Worrall L and Mendez-Parra M. (2017). Fisheries: The implication of current World Trade Organisation Negotiations for Economic Transformation in Developing Countries. Supporting Economic Transformation. UK Aid.

<sup>58</sup> Worrall L and Mendez-Parra M. (2017)16.

<sup>59</sup> Worrall L and Mendez-Parra M. (2017)16.

<sup>60</sup> Mukiibi J, (2017) 3.

<sup>61</sup> Mukiibi J, (2017)3.

domestic fisheries mainly because of the importance the sector plays in the livelihoods of citizens in these countries,

On the other hand, the submissions by the EU, China and Indonesia focused on a broader recognition of developing countries. For instance, Indonesia's proposal was for developing countries' exemptions but only for artisanal fishing and vessels below 24 meters provided they are within the bounds of high sea and regional quotas.<sup>62</sup> The proposal by the EU focused on exempting developing countries and LDCs, provided the vessels are under 10 metres and there is evidence of them not contributing to overfishing.<sup>63</sup>

WTO Members have also been trying to answer the question; assuming the WTO fisheries agreement includes exemptions for artisanal fisheries, should such treatment be granted in the context of special and differential treatment or separately? <sup>64</sup> The SIDS group suggested amending Article 1 of the Agreement on Subsidies and Countervailing Measures to exclude subsidies to artisanal fishing from the definition.<sup>65</sup> On the other hand, Brazil proposed that subsidies to artisanal fishing be treated as 'non-actionable' under a revitalised green light apparently leaving them outside the scope of the special and differential treatment.<sup>66</sup> A paper by UNEP seemed to suggest on the issue that special and differential treatment of artisanal fishing be crafted in a way that would allow the conditions to apply to subsidies falling under general special and differential treatment rules as well as conditions imposed to prevent subsidies from contributing to unsustainable production distortions.<sup>67</sup>

## Conclusion

It is clear that the discussion on fisheries subsidies at the WTO is hinged to the definitional question of artisanal and small-scale fisheries. As can be noted from the discussion earlier, there has not been a consensus on a definition. To address this issue, some have suggested that it would be ideal if the terms are defined at national level.<sup>68</sup> Acknowledging the challenges that can ensue from using national definitions only, it is also suggested that such definitions are supplemented by a clear list of commonly accepted features of small-scale fisheries such as; vessels under 12m (39.3ft), low fuel consumption, fish for food and community use and that the produce sustains local and regional economies.<sup>69</sup> Such a definition can be effective mainly because it acknowledges the inherent differences in small-scale fisheries in different countries depending on their income levels. It also allows for some flexibility for LDCs and developing countries to continue providing beneficial subsidies to their fisheries industries.

In addition, there is need to separate small-scale fisheries from artisanal fisheries for the purposes of subsidies disciplines. The question that Members ought to answer is, 'does small mean weak?' From the on-going discussions, the terms are muddled and if not addressed, might lead to crippling loopholes into the WTO rules. Arguments that are being put forward in favour of relaxing rules for small-scale fishers are that *inter alia*; small vessels are characteristics of fisheries that specially need public support to be economically viable, small vessels are minor players in international commerce and that subsidies have a very small risk of distorting competition, and fishing by small vessels is generally 'eco-friendly' and much less likely to lead to depletion than

<sup>62</sup> Worrall L and Mendez-Parra M. (2017)17.

<sup>63</sup> Worrall L and Mendez-Parra M. (2017)17.

<sup>64</sup> Schorr D.K. (2005) 11.

<sup>65</sup> TN/RL/GEN/57/Rev.1 (Fiji, Jamaica, Papua New Guinea and the Solomon Islands, 4 August 2005) p4.

<sup>66</sup> TN/RL/W/176 (Brazil, 31 March 2005); TN/RL/GEN/56 (Brazil, 4 July 2005); TN/RL.#/GEN/79 (Brazil, 16 November 2005).

<sup>67</sup> Schorr D.K. (2005) 12.

<sup>68</sup> Tipping A. (2017) 7.

<sup>69</sup> Tipping A. (2017) 7.



'large-scale, industrial fishing'.<sup>70</sup> This can be problematic especially when regard is given to small-scale fishers in developed economies who may not fit the above descriptions.

Small-scale fisheries can be economically viable and their activities can overexploit marine resources and cause environmental damage, if mismanaged. For instance, in Thailand, overexploitation and destructive fishing practices by small-scale fishers cause depletion and prevented communities from reaping the rewards of higher prices from the tourism market.<sup>71</sup> Such examples point to the need that the carve-outs

that Members are going to put in place should be such that there will not be unwanted loopholes in the framework.

In summary, artisanal and small-scale fisheries are no doubt an important source of food and livelihoods especially in many developing countries and LDCs. Any agreement reached on disciplines for fisheries subsidies should take into account the special interests of these group of countries, so as to enable them support their artisanal and small-scale fishing communities.



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<sup>70</sup> World Wide Fund for Nature. (2018) 'Small Boats Big Problems' 4.

<sup>71</sup> WWF (2018)5.