

# Policy brief

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## WTO fisheries subsidies negotiations: Will the mountain give birth to a mouse or to a lion?

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After two decades of negotiations, a final agreement is expected by early December 2021. In this policy brief, the author looks at the stakes for African artisanal fisheries in a future agreement on fisheries subsidies at WTO: the prohibition of subsidies to IUU fishing, the presence of foreign fleets in the waters, fuel subsidies, and the question of exemptions for small-scale fisheries. The question remains whether members will reach an agreement that will effectively fulfil SDG 14.6.

### 1. Overview

Developing countries small-scale fisheries have been a topic for discussion during the twenty years of WTO fisheries subsidies negotiations, mainly when it comes to the potential exemptions of fisheries subsidies disciplines for small-scale fisheries (Special and Differentiated Treatment – S&DT).

At the recent meeting of WTO delegations in July,<sup>1</sup> WTO members were asked by the Chair of the fisheries subsidies negotiations whether they would agree that the key component of S&DT is for poor and vulnerable artisanal fishers in developing country Members and Least Developed Countries (LDC) Members. During the press conference that followed, Director-General Ngozi Okonjo-Iweala emphasized that “*all ministers recognize the importance of Special and Differentiated Treatment to their*

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<sup>1</sup> WTO, “Members chart course for autumn negotiations on fisheries subsidies, other issues ahead of MC12”, Trade negotiations committee, News, WTO website. Available at: [https://www.wto.org/english/news\\_e/news21\\_e/tnc\\_23jul21\\_e.htm](https://www.wto.org/english/news_e/news21_e/tnc_23jul21_e.htm)

*vulnerable fishing communities, with the caveat that it has to be sustainable.*” But she also warned that “*a lot of gaps remained to be bridged*” in these negotiations...

Globally, more than 80% of the world fisheries subsidies go to the large-scale fishing sector,<sup>2</sup> with artisanal fisheries often lacking much needed public support for infrastructures and services that would improve their working and living conditions. Yet, while small-scale fisheries (SSF) benefit little from subsidies, their contribution to food security is key. This was recalled by the African Group<sup>3</sup> last March: “*Members need to be mindful of artisanal fisheries critical role in all our countries with regard to food security and livelihood of vulnerable coastal communities that depend on fisheries.*” Looking at the latest draft (from 30 June)<sup>4</sup> negotiating text, several issues are important for the future of African artisanal fisheries, beyond the potential exemptions of fisheries subsidies disciplines for small-scale fisheries.

## 2. Prohibition on subsidies to illegal, unreported and unregulated fishing

Article 3 of the proposed text provides that “*no Member shall grant or maintain any subsidy to those engaged in IUU fishing, as identified by a coastal state, a flag state or an RFMO.*” This is of course welcome: IUU fishing continues to threaten African fishing communities’ livelihood, as it is directly linked to overfishing and carries loss of income that would have been made in the absence of IUU.

However, the draft text also underlines that “*nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.*” It is true that distant water fishing nations fishing in African waters, like China, the EU, Korea, Russia and Japan have taken commitments in other international fora, and it is to be hoped they will exert due diligence in addressing IUU fishing by their fleets.<sup>5</sup>

A proposal under discussion (3.8) suggests that, for a certain period (to be agreed), subsidies granted or maintained by developing country Members, including 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 taking actions regarding subsidies to IUU fishing. However, a lot of IUU activities threatening small-scale fisheries are carried out in the coastal zone, within 12 nautical miles. Such exemption will be a missed opportunity to help curb these illegal activities that jeopardise coastal fishing dependent communities.

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<sup>2</sup> SCHUHBAUER, Anna & al., “The Global Fisheries Subsidies Divide Between Small-and Large-Scale Fisheries”, *Frontiers in Marine Science*, March 2020. Available at : [https://www.researchgate.net/publication/344417814\\_The\\_Global\\_Fisheries\\_Subsidies\\_Divide\\_Between\\_Small-and-Large-Scale\\_Fisheries](https://www.researchgate.net/publication/344417814_The_Global_Fisheries_Subsidies_Divide_Between_Small-and-Large-Scale_Fisheries)

<sup>3</sup> TWN, “Fisheries talks deadlocked over specific carve-out to major subsidizers”, *Third World Network Info Service on WTO and Trade Issues*, 23 March 2021. Available at: <https://twon.my/title2/wto.info/2021/ti210322.htm>

<sup>4</sup> This draft is available at:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?Open=True&filename=q%3A%2FTN%2FRL%2FW276R1.pdf>

<sup>5</sup> The opinion of the International Tribunal for the Law of the Sea (ITLOS) which, following questions posed by the Sub-Regional Fisheries Commission (SRFC), specified in 2015 the obligations of the flag State.

ITLOS, “Case No. 21, Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)”. Available at: <https://www.itlos.org/fr/affaires/role-des-affaires/affaire-no-21/>

In that context, the fact that African countries have repeatedly shared in international fora, such as COFI,<sup>6</sup> their determination to fight IUU fishing in their waters is particularly significant.

### 3. Fleets of foreign origin activities

In Africa, much of the industrial fishing is carried out by foreign vessels from distant water fishing (DWF) countries listed, in a recent report, as “*top providers of harmful subsidies*”:<sup>7</sup> China, Japan, Korea, Russia, EU members. These subsidized DWF fleets access African waters through fishing agreements, private licensing schemes, chartering or reflagging, and often lead to over-exploitation and over-fishing, threatening small-scale fishing communities’ future.

#### A) NATIONAL COMPANIES WITH FOREIGN CAPITAL

Article 5 of the negotiating text has the ambition to address such situations, as it starts, in article 5.1. by saying that “*no Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing,*” and insists that “*no Member shall grant or maintain subsidies contingent upon, or tied to, actual or anticipated fishing or fishing related activities in areas beyond the subsidizing Member’s jurisdiction.*” A proposal under Article 5.4 goes further to address the specific issue of subsidized reflagging: “*No Member shall grant or maintain subsidies for a vessel not flying the flag of the subsidizing Member.*”

This would help curb unsustainable operations undertaken by vessels of foreign origin through private licensing arrangements or the constitution of local companies with foreign capital. For example, in Côte d’Ivoire, as of March 2021, out of 80 industrial fishing vessels based in the port of Abidjan, 55 are operated by local companies, with managers of Chinese nationality.<sup>8</sup> The vessels are either “*ivoirisés*” [they re-flag the vessel, ed.] or chartered [they keep the Chinese flag, ed.]. The “*ivoirisation*” of a vessel grants advantages to the shipowner, including: exemption from fuel taxes, reduced port charges, lower cost for the fishing licence, or priority for administrative purposes. The conditions of “*ivoirisation*”, defined by the Ivorian Maritime Code (Art. 69 to 72) are never respected as systematic derogations are given by the authorities.

In Madagascar, the government signed two protocols<sup>9</sup> allowing access to Malagasy waters for around 30 vessels belonging to Chinese investors. The Chinese investors only gathered the modest capital of 20 million ariary (4300 euros), giving it all the

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<sup>6</sup> PHILIPPE, Joëlle, “COFI34 recap: Increased awareness and space for small-scale fisheries”, CFFA-CAPE website, 10 February 2021. Available at: <https://www.cffacape.org/news-blog/cofi34-summary-increased-awareness-and-space-for-small-scale-fisheries?rq=COFI>

<sup>7</sup> SKERRITT, Daniel and SUMAILA, Rashid, “Assessing the spatial burden of harmful fisheries subsidies”, Fisheries Economics Research Unit, February 2021. This report was supported by the NGO Oceana and can be downloaded at: <https://oceana.org/publications/reports/tracking-harmful-fisheries-subsidies>

<sup>8</sup> GOREZ, Béatrice, “African artisanal fisheries at the forefront of the fight against predatory and opaque industrial fishing companies”, CFFA-CAPE website, 23 March 2021. Available at: <https://www.cffacape.org/publications-blog/african-artisanal-fisheries-at-the-forefront-of-the-fight-against-predatory-and-opaque-industrial-fishing-companies>

<sup>9</sup> GOREZ, Béatrice, “Small scale fisheries at risk: Madagascar signs destructive fishing agreements with Chinese investors”, CFFA-CAPE website, 17 November 2020. Available at: <https://www.cffacape.org/publications-blog/small-scale-fisheries-at-risk-madagascar-signs-destructive-fishing-agreements-with-chinese-investors>

characteristics of a front company. These vessels are granted access to multiple species, including fisheries for which high fees are normally paid, such as shrimp or lobster. With their “multi-species” licences, these vessels were also exempted from existing sectoral regulation and management for high commercial value species such as shrimp.

Overall, these types of arrangements represent a significant loss of revenue for African governments and jeopardise the future of small-scale fishing communities they compete with, through the overexploitation of resources and destruction of the marine environment.

## B) GOVERNMENT-TO-GOVERNMENT AGREEMENTS

The Article 5 of the negotiating text is less clear on whether government-to-government access agreements will be covered by the subsidies discipline. Article 5.2.a highlights that “*No Member shall grant or maintain subsidies contingent upon, or tied to, actual or anticipated fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction.*” However, a footnote (No 11) precises that “*the mere fact that a subsidy is granted or maintained to vessels or operators that may be engaged in fishing or fishing related activities in areas beyond the subsidizing Member's jurisdiction shall not for that reason alone be considered a prohibited subsidy within the meaning of Article 5.2(a).*”

Furthermore, article 5.2.(b) states that the prohibitions “*shall not apply to the non-collection from operators or vessels of government-to-government payments under agreements and other arrangements with coastal Members for access to the surplus of the total allowable catch of the living resources in waters under their jurisdiction, provided that the requirements under Article 5.1.1 are met.*” - Article 5.1.1 specifies that “*a subsidy is not inconsistent with Article 5.1 if the subsidizing Member demonstrates that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.*”

So, in short, government-to-government payment for access agreements could continue, provided the subsidizing Member demonstrates that “*measures are implemented*”, regardless of whether these measures are efficient, “*to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.*”

The current wording fits the EU Sustainable Fisheries Partnership Agreements (SFPAs) like a glove. Not only the principle of accessing only the surplus of resources through SFPAs is enshrined in the Common Fisheries Policy, but the texts of SFPAs include a battery of conservation measures demonstrating EU support to the coastal country's efforts to maintain the resources targeted at sustainable level.

Up to now, many developing countries wanted to maintain these government-to-government fishing access agreements outside the scope of the fisheries subsidies disciplines, as they represent an important source of revenue for them. However, the Chair of the WTO negotiations on fisheries subsidies indicated that there is a growing opposition. For example, the ACP group recently asserted that, “*Article 5.1 must be a clean prohibition for the most harmful subsidies to overcapacity and overfishing[...]. Article 5.2 should be removed.*” The group also argues that “*on the issue of the term ‘demonstrate’, we believe that the text for Article 5.2, as is, is flawed as it only*

*requires that members demonstrate that measures are in place to maintain stocks [...], a more sustainable approach would be to have members demonstrate that stocks are in a healthy condition.”<sup>10</sup>*

## 4. More transparency on subsidies would be welcome

Article 8 of the negotiating text, on notification and transparency, says that each Member shall provide, as part of its regular notification of fisheries subsidies, information on:

*“...the type or kind of fishing activity for which the subsidy is provided; catch data by species in the fishery for which the subsidy is provided; and status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and whether such stocks are shared with any other Member or are managed by an RFMO/A; conservation and management measures in place for the relevant fish stock; name and identification number of the fishing vessel or vessels benefitting from the subsidy; and fleet capacity in the fishery for which the subsidy is provided”*

Each Member shall also notify (8.2) *“(a) any list of vessels and operators that it has determined as having been engaged in IUU fishing; and (b) a list of any fisheries access agreements in force with another government or governmental authority, and such notification shall consist of the titles of the agreements and a list of their parties.”*

Fisheries is a notoriously opaque sector, and lack of transparency enables corruption and ultimately facilitates unsustainable fishing operations. Any effort to incentivize more transparency in maritime fisheries should be welcome. Indeed, more information would be relevant to notify, including the beneficial owners<sup>11</sup> of the operation or vessel subsidized.

In any case, a question remains about whether the mandate of WTO, a trade organisation, includes the examination of information such as fish stocks assessments or fisheries management measures, and whether it has the capacity to do so. Many developing countries rightly argue that the WTO is not a fisheries management agency.

## 5. Fuel subsidies (fuel detaxation)

The Article 5 of the negotiating text recognizes that subsidies for the purchase of fuel contributes to overcapacity or overfishing, and proposes that such subsidies should not be granted.

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<sup>10</sup> TWN, *Ibid.*

<sup>11</sup> GOREZ, Béatrice, “Cameroon IUU yellow card: The EU should also sanction European companies hiding behind this country’s flag”, CFFA-CAPE website, 11 March 2021. Available at: <https://www.cffacape.org/publications-blog/cameroon-iuu-yellow-card-the-eu-should-also-sanction-european-fishing-companies-hiding-behind-this-countrys-flag>

Fuel tax exemptions reduce the costs of fishing. In a situation where stocks are not at the sustainable level, fuel tax exemptions contribute to overfishing. In the case of the EU distant water fleets, which currently benefit from EU de-taxed fuel, it is unclear whether removing such detaxation of fuel would really affect those who refuel in third countries where fuel tax is, anyway, very low.

However, when looking at developing countries, fuel detaxation is one of only subsidies to the benefit of small-scale fisheries. In the absence of an alternative, removing fuel detaxation should only be envisaged if and when public funds are provided for infrastructures and services that would improve the working and living conditions throughout the artisanal fisheries value chain.

## 6. Special and Differentiated treatment – Exemptions for Small-scale Fisheries

Some African countries, like Cameroon, seek a general carve-out for artisanal fisheries in all three pillars such as disciplines on Illegal, Unreported, and Unregulated (IUU) fishing, overfished stocks, and overcapacity and overfishing, and to limit the burden of the notifications.

Currently, in the draft text, exemptions are limited to “*subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, for low income, resource-poor or livelihood fishing or fishing related activities within 12 nautical miles measured from the baselines for a period of [2] years from the date of entry into force of this [Instrument].*”

If such exemptions are granted, the issue of the definition of what is “low income, resource poor, livelihood fishing” will be very important, to ensure that traditional, small-scale, low impact fisheries are appropriately taken into account.

Some members said they prefer the approach in the Chair’s consolidated text where the territorial seas, defined as 12 nautical miles from the shore, of developing countries and least developed countries (LDCs) would instead be “*carved out of subsidy prohibitions*” under specific disciplines in chapters on IUU fishing, overfished stocks, and overfishing and overcapacity.

Members in favour of using the nautical mile approach argued that the territorial seas are where most small-scale fishers operate and are therefore a more pragmatic way to apply exemptions. Other members supported defining artisanal fisheries. This approach, as currently proposed, would also apply to developed countries’ artisanal fishers.

Exempting any fishing activities in the 12 miles from subsidies discipline may be detrimental to artisanal fishing, as in many cases, that’s the zone where coastal trawlers compete with small scale fishing, sometimes making incursions in the very rich coastal waters, where they not only destroy artisanal fishers fishing gears, but also the coastal ecosystem.

## 7. Conclusion: fulfilling the SDGs?

There have been suggestions that some members were considering a trade-off<sup>12</sup> between the special carve-out being provided to big subsidizers on the one side, and negotiating effective special and differential treatment for developing and least-developed countries on the other. If such trade off was to take place in a way that would allow on the one side Distant Water Fishing nations to continue providing harmful subsidies to their fleets fishing in African waters, and exempting, on the other side, coastal trawlers fishing within the 12 miles zone from any discipline on subsidies, African artisanal fishing communities would have got the worst of the two worlds.

A final agreement on fisheries subsidies is expected to be adopted at the WTO Twelfth Ministerial Conference (MTC 12) that will be held from 30 November to 3 December 2021.

Depending on the level of ambition of compromises on key issues, a WTO agreement on fisheries subsidies could be an important step for States to fulfil the Sustainable Development Goal (SDG) 14.6, which “*calls on UN Members to eliminate subsidies that contribute to overfishing, overcapacity or illegal, unreported, and unregulated (IUU) fishing practices.*”

**The question remains: when it comes to effectively disciplining subsidies in a way that will fulfil the SDGs commitments, will the WTO mountain give birth to a mouse or to a lion?**

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Brussels, 9 September 2021

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<sup>12</sup> TWN, “‘Tug of war’ between major subsidizers on fisheries & non-polluters”, Third World Network Info Service on WTO and Trade Issues, 26 February 2021. Available at: <https://twn.my/title2/wto.info/2021/ti210221.htm>