

Position paper

WTO agreement on fisheries subsidies: a mouse is born

Brussels, 2 November 2022

The article analyses whether the WTO fisheries subsidies agreement addresses the main challenges to the future of artisanal fisheries in Africa, and highlights the ban on subsidies for overexploited stocks as good news. The author further stresses that for the agreement to contribute effectively to the Sustainable Development Goals, it is essential that the forthcoming negotiations, prior to the thirteenth ministerial conference, focus overfishing and overcapacity, especially by foreign-owned vessels.

1. Overview

One of the main threats to the future of artisanal fisheries in Africa is overcapacity and overfishing by foreign-owned industrial vessels accessing African waters through various types of arrangements.

Overcapacity and overfishing were not addressed in the agreement on fisheries subsidies reached last June, after 20 years of negotiations, at the World Trade Organisation (WTO). WTO members met again two weeks ago in Evian-les-Bains to "*think creatively*" about how to start the "*second round of negotiations*".¹ It is imperative that, by the next Ministerial Conference (MC13), WTO members negotiate new disciplines to tackle subsidies that cause overcapacity and overfishing, in particular subsidies to foreign vessels.

¹ WTO, "Members brainstorm on initiating "second wave" of WTO fisheries subsidies talks", News 2022, Negotiations on fisheries subsidies, 10 October 2022. Available at: https://www.wto.org/english/news_e/news22_e/fish_10oct22_e.htm

2. The mountain gave birth to a mouse..

In 2001, the WTO received an innovative mandate² from member states to improve disciplines on subsidies, specifically mentioning fisheries as an important sector to be covered. Over the years, the mandate has been refined to address overfishing and overcapacity as well as special and differential treatment (S&DT) for developing and least developed country (LDC) members. In 2015, an agreement was added to the Sustainable Development Goals, which in its SDG 14.6 called for the *"elimination of subsidies that contribute to overfishing, overcapacity or illegal, unreported and unregulated (IUU) fishing practices."*

Twenty-one years later, in June 2022, an agreement was announced with much fanfare that included a first package of disciplines on fisheries subsidies. Ambassador Santiago Wills, who had chaired the negotiations, was jubilant two weeks later in Lisbon at the second UN Oceans Conference,³ insisting on the achievement of one of the targets of SDG 14, 'aquatic life'. Still, two-thirds of WTO members, i.e., 109 of the 164 members, need to notify their acceptance of the agreement reached in June for it to enter into force. But a more ambitious agreement is also needed to combat overfishing and overcapacity.

The June agreement includes a ban on subsidies to vessels engaged in IUU fishing (Article 3), to those fishing for overexploited stocks (Article 4) and for high seas fishing outside RFMOs (Article 5.1). It also requires members to *"exercise special care"* and *"restraint"* for vessels not flying their flag or for stocks with unknown status. The agreement sets out stringent transparency and biennial reporting obligations, except for developing countries and Least Developed Countries (LDCs) whose annual share of the global catch does not exceed 0.8%, which will be able to report every four years.

Developing countries and LDCs, including China, have a two-year grace period for the first two disciplines of subsidies. The Ministerial Declaration also decides that *"the negotiating group [...] shall continue negotiations"*, taking into account the SDT, *"on the basis of outstanding issues [...] [to] obtain full agreement, [...] on further disciplines on certain forms of subsidies that contribute to overcapacity and overfishing."*⁴

What is not covered by the agreement: public investments in fisheries infrastructure, government-to-government fisheries agreements, and so-called 'non-specific' subsidies such as fuel tax - much to the disappointment of numerous environmental NGOs that have campaigned against fuel tax for two decades. None of these 3 cases will be revisited in future negotiations.

In September 2021, we asked whether, when it came to *"effectively disciplining subsidies in a way that meets the commitments of the SDGs, will the WTO mountain give birth to a mouse or a lion?"*⁵ From the perspective of African artisanal fisheries, while there are advances, such as the prohibition of subsidies for fisheries on

² WTO, "The Doha Declaration explained", Trade topics – Doha agenda. Available at: https://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm

³ A recording of that session can be found at the following link: <https://media.un.org/en/asset/k18/k185g5nkrq>

⁴ WTO, "Agreement on fisheries subsidies – Ministerial decision of 17 June 2022", WT/MIN(22)/33 WT/L/1144. Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?Open=True&filename=q%3A%2FWT%2FMIN22%2F33.pdf>

⁵ GOREZ, Béatrice, "WTO fisheries subsidies negotiations: Will the mountain give birth to a mouse or to a lion?" CFFA-CAPE website, 9 September 2021. Available at: <https://www.cffacape.org/publications-blog/wto-fisheries-subsidies-negotiations-will-the-mountain-give-birth-to-a-mouse-or-to-a-lion>

overexploited stocks, the agreement still does not address the presence of foreign fleets in African waters⁶ that compete with artisanal fisheries for access to resources, and also, in the case of coastal trawlers, destroy artisanal fishermen's fishing gear and cause collisions, sometimes resulting in fatalities.

3. First comes the good news...

The ban on subsidies for overexploited stocks (Article 4) is good news for small-scale fisheries. For example, in West Africa, shared stocks of sardinella, a staple food of the region's populations, are heavily overexploited, notably for the production of fish oil and fishmeal.⁷ The scarcity of sardinella in West African waters and on the markets is undermining the jobs of thousands of artisanal fishermen and women processors. This discipline is therefore welcome to contribute to the achievement of the SDGs, in particular food security (SDG 2 "a world without hunger") and livelihoods (SDG 8 "full employment and decent work") of developing coastal communities, and "access to resources and markets for small-scale fisheries" (SDG 14b).

The overexploitation of sardinella resources in West Africa is not new. The Fishery Committee for the Eastern Central Atlantic (CECAF) has been advising for years to reduce fishing effort by 50% or more. However, the implementation of management measures depends on agreement between several coastal countries - in particular Mauritania, Senegal and the Gambia - which share small pelagic stocks,⁸ a process that has long stalled partly due to a lack of political will. The development of the reduction industry in the region has exacerbated the problem, with foreign fleets, mainly Chinese and Turkish, pouring indiscriminately tonnes of small pelagics,⁹ including overfished sardinella, into fishmeal and oil factories.

In the absence of concerted management measures between these countries, the prohibition of subsidies to foreign fleets fishing sardinella in the region (Turkey, China, Russia and EU member states), could help reduce the pressure on the resource.

4. ...and then the bad ones

In Africa, industrial fishing is mainly carried out by vessels from countries identified as "major providers of harmful subsidies": China,¹⁰ Japan, Korea, Russia and EU member states. In many cases, these fleets target fish resources in direct competition with artisanal fisheries. These fleets gain access to African waters through fishing agreements, private licences or by chartering or re-flagging, often under a joint

⁶ 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>

⁷ DIALLO, Mamadou Aliou, "Fishmeal plant: A threat to food and nutritional security?", African Confederation of Artisanal Fisheries Organisations (CAOPA) website, 21 April 2021. Available at: <https://caopa.org/en/fishmeal-plant-a-threat-to-food-and-nutritional-security/21/04/2021/news/3254/>

⁸ MORIN, Michel, "Fisheries management in West Africa: the example of sardinella", CFFA-CAPE website, 17 October 2022. Available at: <https://www.cffacape.org/publications-blog/fisheries-management-in-west-africa-the-example-of-sardinella>

⁹ GOREZ, Béatrice, "When people are starving, footage of fresh fish used for fishmeal is disturbing", CFFA-CAPE website, 22 February 2022. Available at: <https://www.cffacape.org/news-blog/when-people-are-starving-footage-of-fresh-fish-used-for-fishmeal-is-disturbing>

¹⁰ PHILIPPE, Joelle, "How large is the Chinese Distant Water Fishing fleet?" CFFA-CAPE website, 18 June 2020. Available at: <https://www.cffacape.org/publications-blog/how-large-is-the-chinese-distant-water-fishing-fleet>

venture¹¹ (local company with foreign capital). If the vessel is flagged in the coastal country where it operates, it is then considered national.

For example, in Côte d'Ivoire, in March 2021, there were 55 vessels operated by local companies but managed by Chinese nationals - either chartered or "ivory-flagged".¹² The "ivoirisation" process confers advantages to the shipowner, and moreover, the conditions for re-flagging vessels are rarely respected, as these companies benefit from systematic derogations.

Another example, also in Madagascar, in November 2020, we denounced the signing of two fishing agreements with Chinese investors.¹³ They granted more or less 30 vessels the right to fly the national flag and gave them multi-species licences that exempted them from regulation and management of certain species of high commercial value, notably shrimps - the pink gold of the great island of the Indian Ocean.

In the last proposed agreement on subsidies,¹⁴ an article, which has since disappeared, addressed the issues of overcapacity and overfishing by re-flagged vessels, proposing that: "No Member shall provide or maintain subsidies to any vessel not flying the flag of the Member providing the subsidy." This point was taken up again but in a "decaffeinated" version in the June agreement: "a Member shall exercise particular care" and "restraint in granting subsidies to vessels not flying its flag."

It is imperative that further negotiations address overfishing and overcapacity subsidies to foreign flagged vessels, including those re-flagged in a developing country or LDC, with due regard to the loopholes that such vessels could benefit from under special and differential treatment (S&DT). Depending on how S&DT is approached, many vessels re-flagged in the coastal country where they operate, and therefore under a national regime, competing with artisanal fisheries, could escape much of the disciplines on subsidies. This would be harmful to African artisanal fisheries.

5. Artisanal fisheries have "swallowed a whole lion": what public investment for the sustainable development of their activities?

Also last June, while Ambassador Wills was presenting the agreement reached in the plenary room of the Ocean Conference in Lisbon, artisanal fishers and women processors from five continents were presenting concrete demands to their governments, including in terms of investment of public funds, to ensure that SDG 14b is achieved by 2030.

¹¹ GOREZ, Béatrice, "Investment and transparency in EU-Africa fisheries relations: what about joint ventures?" joint position paper with CAOPA, CFFA-CAPE website, 28 July 2020. Available at: <https://www.cffacape.org/publications-blog/q2nriapbiy782wqmauibptrt43x1ku>

¹² GOREZ, Béatrice, "WTO fisheries subsidies negotiations: Will the mountain give birth to a mouse or to a lion?", *op. cit.*

¹³ 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>

¹⁴ The former draft text from 30 June 2021 can be found at the following address: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?Open=True&filename=q%3A%2FTN%2FRL%2FW276R1.pdf>

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For them, public funds, subsidies, must be invested in services and infrastructure to improve the working and living conditions¹⁵ of coastal communities - especially those of women fish processors, such as access to clean water, electricity, and drainage facilities at processing sites.

In its Call to Action,¹⁶ artisanal fisheries call on governments to support resilient artisanal fishing communities, so that they can "effectively play their key role as stewards of the ocean and contributors to food security and nutrition". This requires effective investment in, for example, the development of co-management schemes, such as participatory monitoring; adequate funding for the enforcement of environmental regulations prior to the concession of new ocean uses to blue economy industries; improved collection and dissemination of data on the sector; or investment in initiatives that make communities more resilient, such as reducing post-harvest losses or providing alternative supplies for women processors.

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¹⁵ GOREZ, Béatrice, "Making fish worth its weight in gold: granting better access to markets for women in African artisanal fisheries", CFFA-CAPE website, 2 May 2022. Available at: <https://www.cffacape.org/publications-blog/making-fish-worth-its-weight-in-gold-granting-better-access-to-markets-for-women-in-african-artisanal-fisheries>

¹⁶ The call to action can be found at the following address: <https://www.cffacape.org/ssf-call-to-action>